TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 281.

IDA RICHARDSON HOOD AND ODILE MUSSON HOOD HOLLAND, APPELLANTS,

vs.

J. S. McGEHEE ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED OCTOBER 16, 1924.

(23,909)

(23,909)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 281.

IDA RICHARDSON HOOD AND ODILE MUSSOM HOOD HOLLAND, APPELLANTS,

vs.

J. B. McGEHEE ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print
Caption	a	1
Transcript from the circuit court of the United States for the northern district of Alabama	c	1
Bill of complaint	1	2
Exhibit A—Affidavit of Geo. T. McGehee and Mrs. Elizabeth B. McNair, his wife	8	6
B—Certified copy of petition and order of court in the matter of the minor children of J. B. Hood	11	8
C—Article 214 of the Revised Civil Code of Louisiana	15	10
D—Conveyance by Sharritt *et al.* to McGehee, December 3, 1886	16	11
Order allowing amendment	19	13
Amendment to original bill	20	13
Demurrers of defendants	22	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1915.

	Original.	Print
Exhibit E to bill of complaint—Petition of R. M. McGehee to chancery court of Wilkinson county	25	16
Exhibit A—Will of Geo. T. McGehee	27	17
Letters of administration *c. t. a.*	30	19
Motion to amend bill	33	21
Order allowing amendment	34	21
Demurrers to bill of complaint	35	22
Opinion of court *in re* demurrers	38	24
Amendment to bill	46	30
Order allowing amendment	48	31
Demurrers to bill as amended	49	32
Final decree	50	33
Assignments of error	52	34
Bond on appeal	54	35
Petition for appeal	56	36
Order extending time	57	37
Certificate of clerk	58	37
Argument and submission	59	38
Opinion of the court	59	38
Judgment	60	38
Petition for appeal and order allowing same	62	39
Assignment of errors	64	40
Bond of appeal	68	41
Clerk's certificate	72	42
Citation	74	43
Waiver of citation and service	76	44

a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on the Third Monday in October, A. D. 1912, at Montgomery, Alabama, Before the Honorable Don A. Pardee, and the Honorable David D. Shelby, Circuit Judges, and the Honorable Edward R. Meek, District Judge:

IDA RICHARDSON HOOD et al., Appellants,
versus.
J. B. MCGEHEE et als., Appellees.

b Be it remembered, that heretofore, towit, on the 21st day of February, A. D. 1912, a transcript of the record of the above styled cause, pursuant to an appeal from the Circuit Court of the United States for the Northern District of Alabama, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2331, as follows:

c TRANSCRIPT OF THE RECORD.

2331.

In the Matter of IDA RICHARDSON HOOD et als.
vs.
J. B. MCGEHEE et als.

From the United States Circuit Court, Northern District of Alabama to the United States Circuit Court of Appeals, Sitting at New Orleans, Louisiana.

Filed Feb. 21, 1912.

Percy, Benners & Burr, Birmingham, Alabama.
Pace & Stimpson, 29 Broadway, New York City, Attorneys for Appellants.
Tillman, Bradley & Morrow, Attorneys for Appellees, Birmingham, Alabama.

U. S. Circuit Court of Appeals, filed Feb. 21, 1912. Frank H. Mortimer.

1 Transcript of the Record in Case No. 214, wherein Ida Richardson Hood, et als., are complainants, and J. B. McGehee, et als., are defendants, from the Circuit Court of the United States, Northern District of Alabama, to the United States Circuit Court of Appeals, New Orleans, La.

Bill of Complaint.

Filed February 11th, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of Alabama. In Equity.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. McGEHEE et al., Defendants.

To the Judges of the Circuit Court of the United States for the Northern District of Alabama:

Ida Richardson Hood and Odile Mussom Holland, the wife of Edward W. Holland, who before her marriage was Odile Mussom Hood, citizens of the State of New York, residing in the City
2 of New York, bring this their bill against J. B. McGehee, Caroline McGehee, Scott McGehee, Mason Snowden, Kate Burruss Gender, Kate Burruss Semple, Mary Burress Semple, citizens of the State of Louisiana, John Hanson Kennard, a citizen of the State of New York, and Laura McGehee Davis, a citizen of the State of Texas, Edward John Percy, Eugenia Corrine Percy, Harry Trimble McGehee, Arthur Merwin McGehee, Mary Cornelia McGehee, Edward E. McGehee, John Nathaniel McGehee, Annie B. McGehee, who is non compos mentis and has no guardian, Robert B. Semple, John Burruss Semple, Thomas C. Kennard, Dr. Edward L. McGehee, Stella McGehee, Charles G. McGehee and Mrs. Wilson Williams, whose residences are unknown, and thereupon humbly complaining, showeth unto your Honors yyour orators:

I. This this is a suit of civil nature in equity in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars and is a suit over which the Circuit Court of the United States for the Northern District of Alabama has jurisdiction under the Constitution of the United States and the laws made in pursuance thereof.

II. That they are the daughters of the late General John B. Hood, issue of his marriage with Mrs. Anna Maria Hennen. That their said father departed this life on August 30, 1877, and that subsequently his close, intimate and warm friend, George T. McGehee, with the approval and co-operation of his wife, Elizabeth B. McNair McGehee, adopted your orators when but three years old, according to the laws of the State of Louisiana, in which state they were born and then lived That the said adoption proceedings were had,

entered into and properly consummated before the properly constituted authorities of the State of Louisiana, as will more fully appear from the certificate of Andrew Hero, Jr., a Notary Public in and for the Parish of Orleans in the State of Louisiana; a certified copy of said proceedings is herewith filed, marked Exhibit A, which was recorded in the County of Jefferson, State of Alabama on June 8th, 1906, a certified copy of the petition of the said George T. McGehee and wife, granted by the Hon. A. L. Tissot, Judge of the
3 Second District Court for the Parish of Orleans, State of Louisiana, marked Exhibit B, and a copy of the adoption laws of the State of Louisiana, marked Exhibit C, all of which are prayed to be taken and read as a part of this bill.

That after their adoption and through the years of association that followed, they were not only tenderly reared, educated and carefully guarded from all harm, but in truth and in fact they were beloved and cherished by said adopting parents, George T. McGehee and his wife "as if they were their own children" according to the words, tenor and effect of said mentioned instrument.

Your orators state that the said George T. McGehee departed this life on the 5th day of February, 1906, and Elizabeth T. McGehee on February 22, 1893. That at the time of his said death, the said George T. McGehee was seized and possessed of the following described piece or parcel of land, situated in Jefferson County, Alabama, to wit: The E. ½ of S. W. ¼ of Section 32, Township 16, R. 2, West and also all of the East ½ of N. W. ¼ of Section 5, in Township 17, Range 2 West, which lies North of Five Mile Creek, excepting about fifteen acres thereof lying on said creek which is more particularly described in a deed from H. J. Sharritt to Asa J. Sharritt, and excepting one-half Square Acre around the grave of Mrs. Morry Robinson in the N. E. ¼ of S. W. ¼ of Sect. 32, Tp. 16, R. 2, West, which will more fully appear from exhibit marked D and prayed to be taken and read as a part of this bill.

Your orators state and aver that under the said adoption proceedings had in the State of Louisiana, the said George T. McGehee and his wife did "invest them with all the rights and benefits of legitimate children in their estate in the same manner and to the same extent as if said minors Odile Mussom Hood and Ida Richardson Hood had been the daughters of said George T. McGehee and Elizabeth B. McGehee," and especially in said property in the State of Alabama, because of Section I, Article 4 of the Constitution of the United States, which reads as follows:

"Full faith and credit shall be given in each state to public arts,
records and judicial proceedings of every other state, and
4 Congress may by general laws prescribe the manner in which
said acts, records and proceedings shall be proved and the effect thereof"

and in pursuance of said constitutional provision, Congress provided that:

"The acts of the Legislature of any state or territory or of any country subject to the jurisdiction of the United States * * *

and the said records and judicial proceedings so authenticated shall have full faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

That your orators have been in possession of said lands since the death of said George T. McGehee and have received the rents, issues and profits of same. That one James E. Haigler was and is now their tenant and in the quiet and peaceful possession of said premises. That since the commencement of said tenancy, the defendants—who are collateral relatives of the said George T. McGehee—have claimed title to said lands as heirs at law of said George T. McGehee, by virtue of said blood relationship, notwithstanding your orators' superior and paramount title to said premises.

In view of said provision of the Constitution and laws of the United States and recitals herein, your orators charge that the claim of said defendants to title to said property is made for the purpose of harassing your orators and their tenant in the peaceful possession and enjoyment of their property and casting a cloud upon their title, and that they bring this suit to quiet their title to said lands and remove such cloud.

The said George T. McGehee left surviving him neither father nor mother, nor children born of his body nor descendants of such children. The respondents are collateral kin of said George T. McGehee and are, if complainants are not the heirs of said George T. McGehee entitled to inherit, his next of kin entitled to inherit his estate; but this last averment is without prejudice to the contention set forth in the third paragraph of the bill.

5 III. Your orators furthermore allege and claim that by virtue of said instruments in writing marked Exhibits A and B, hereinbefore made a part of this bill, the said George T. McGehee and Mrs. Elizabeth B. McGehee, his wife, did actually enter into a formal and valid contract by which they contracted with said infants and their tutrix, the legal representative of said infants, to "invest them with all the rights and benefits of legitimate children in their estate" and that ample and sufficient consideration as shown in said instrument marked Exhibits A and B, passed to make it a binding contract between your orators and the said George T. McGehee and wife, as well as upon their heirs at law; that your orators on their part performed all the duties of children towards their adopting parents and they therefore aver that said contract should be specifically performed and enforced against the estate of the said George T. McGehee and any and all claimants to said property and especially against the defendants in this suit.

Your orators state that Edward John Percy and Eugenia Corrine Percy are infants of tender age and that a guardian ad litem should be appointed for them.

IV. Your orators therefore pray that being remediless, save in a court of equity where matters of this nature are properly heard and determined, that your honors:

1. Will make the above named J. B. McGehee, Caroline McGehee, Scott McGehee, Mason Snowden, Kate Burruss Gender, Kate Bur-

russ Semple, Mary Burruss Semple, John Hanson Kennard, Laura McGehee Davis, Edward John Percy, Eugenia Corrine Percy, Harry Trimble McGehee, Arthur Herwin McGehee, Mary Cornelia McGehee, Edward E. McGehee, Arthur Harry McGehee, John Nathaniel McGehee, Annie B. McGehee, Robert B. Semple, John Burruss Semple, Thomas C. Kennard, Dr. Edward L. McGehee, Stella McGehee, Charles G. McGehee and Mrs. Wilson Williams, parties defendant to this bill and require them to answer the same, but oath to such answer is expressly waived.

6 2. That a guardian ad litem be appointed for the infant defendants to protect their interest, if any they have, and to answer for them and for himself.

3. That your Honors will declare said adoption proceedings had in the State of Louisiana as establishing the rights of your orators as heirs and entitled to the property of the late George T. McGehee mentioned and described.

4. Or that the said instruments marked Exhibits A and B be declared a contract binding upon the estate of George T. McGehee, deceased, and be specifically enforced against his said estate and especially said property above mentioned and described and against the defendants in this suit.

5. That the said defendants be enjoined from hereafter setting up any claim in any manner to the property mentioned and described.

6. That an order of publication be had as to the non-resident defendants and those whose residences are unknown and who cannot be served with process and who do not voluntarily appear and answer.

7. That your Honors will grant not only writs of injunction comformable and necessary to the objects and purposes of this bill, but also writ of subpœna to be directed to each defendant and each of them at a certain time and at a certain penalty to be therein specified, to be and appear before this Honorable Court then and there to answer the premises and to abide by the order and decree of the court herein, and that said defendants may appear herein according to law.

8. That your Honors will grant such other, further and general relief as to equity may seem meet and proper as the case may require.

And they they will ever pray, etc.

(Sgd.) PERCY, BENNERS & BURR,
Attorneys for Complainants, 1324 Brown-Marx Building, Birmingham, Alabama.

7 PACE & STIMPSON & ARROYO,
Of Counsel, 42 Broadway, New York City.

STATE OF NEW YORK,
County of New York, ss:

Ida Richardson Hood, one of the complainants herein, being duly sworn, says; that she has read the foregoing bill and knows the contents thereof and that the same is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters she believes it to be true.

(Sgd.) IDA RICHARDSON HOOD.

Sworn to before me this 18th day of January, 1911.

(Sgd.) FRED H. SMYTH,
Notary Public #152, *N. Y. County.*

8 EXHIBIT A TO BILL OF COMPLAINT.

Filed February 11th, 1911. Chas. J. Allison, Clerk.

STATE OF LOUISIANA:

Adoption of ODILE MUSSOM HOOD et al., Minors.

I, The undersigned Secretary of State, of the State of Louisiana, do hereby certify that Andrew Hero, Jr., before whom the annexed instrument in writing was taken, was at the time of taking the same, a Notary Public in and for the Parish of Orleans in the State of Louisiana duly commissioned by the executive authority of said State of Louisiana and authorized under the laws of Louisiana, to take acknowledgement and proof of the execution of deeds and other instruments in writing, and to administer oaths, and affirmations, to be used in any court in said State of Louisiana, and for general purposes; that his signature thereto is genuine, as I verily believe, that said document purports to be taken in all respects as required by the laws of the State of Louisiana, and that said attestation is in due form and by the proper Officer.

Given under my signature, authenticated with the impress of my Seal of Office, at the City of Baton Rouge, this 25th day of May, A. D. 1906.

[SEAL.] MICHEL,
Secretary of State.

STATE OF LOUISIANA,
Parish and City of New Orleans, ss:

Be it known that on this sixteenth day of March, in the year of our Lord one thousand eight hundred and eighty and of the Independence of the United States of America the one hundred and Fourth, before me, Andrew Hero, Jr., a Notary Public in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified and in the presence of witnesses herein after named
9 and undersigned, personally came and appeared, George T. McGehee and Mrs. Elizabeth B. McNair the wife of lawful age of said George T. McGehee, residents of Woodville in the State of Mississippi; said Mrs. McGehee being herein duly authorized and assisted by her said husband which said appearers severally declared

that being desirous of adopting the minors Odile Mussom Hood and Ida Richardson Hood, twins of the age of three years, and the issue of the marriage of the late John B. Hood with the late Mrs. Anna Maria Hennen, both late of this City, deceased, they have petitioned the Hon. Second District Court for the Parish of Orleans to be permitted to appear before the undersigned Notary to execute the requisite act of adoption; and that after due proceedings had, and the consent of the Grand-mother and tutrix of said minors having been given, their prayer was granted by Hon. A. L. Tissot, Judge of the Second District Court for the Parish of Orleans, and they were referred by him to the undersigned Notary for purpose of executing the act of adoption in the premises. All relatives to which will more fully appear by reference to a certified copy of said petition and order of Court hereto annexed for reference. Now, therefore, said George T. McGehee and Elizabeth B. McGehee moreover declared that in consideration of the premises and by virtue of the provisions of Article Two hundred and Fourteen of the Revised Civil Code of this State, and of the seceral Acts of the Legislature of this State in *in* reference to the adoption of Minors, especially Act No. 31 of the Legislature of this State, approved April 23, 1872, they do by these presents formally adopt the aforesaid Odile Musson Hood and Ida Richardson Hood, minors of the age of three years and orphan children of the late John B. Hood and Anna M. Hennen, deceased; bind and obligate themselves to support, maintain and educate them as if they were their own children; and hereby invest them with all the rights and benefits of legitimate children in their estate, in the same manner and to the same extent as if said minors, Odile Musson Hood and Ida Richardson Hood, had been the daughters of said George T. McGehee and Elizabeth B. McGehee, and here personally appeared and intervened herein Eleanora Robertson, the widow of
10 lawful age of the late Duncan N. Hennen, deceased, the grand-mother of said minors, and duly appointed and qualified as their tutrix proceedings had in said Second District Court under the No. 41352 of its Docket, who, after having read what is hereinbefore written, declared and said that she approves of the aforesaid Adoption of said Minors Odile Musson Hood and Ida Richardson Hood, and by these presents surrenders unto said George T. McGehee and Elizabeth B. McNair the entire parental authority over the aforesaid minors; and in token of her concurrence in this act of Adoption she has joined in the execution of these presents and signs this act of adoption. Thus done and passed at my office in New Orleans aforesaid in the presence of Messrs. David J. Dowers and John A. Morris, competent witnesses, both of this City, who hereto sign their names with said appearers and me Notary. Original signed.

G. T. McGEEHEE.
E. B. McGEEHEE.
ELEANORA R. HENNEN,
Tutrix.
JOHN A. MORRIS.
D. J. DOWERS.
ANDREW HERO, JR.,
Not. Pub.

A true copy of the original act on file and extant in my notarial Archives and in my custody.

New Orleans, Louisiana, May 24th, A. D. 1906.

[SEAL.] ANDREW HERO, JR.,
Not. Pub.

Filed in office for record, June 8th, 1906, and duly recorded in Vol. 429, Record of Deeds, Page 258, this 21st day of June, 1906.

S. E. GREEN,
Judge of Probate.

11 STATE OF ALABAMA,
County of Jefferson, Probate Court:

S. E. Green, Judge of the Probate Court in and for said County, in said State, hereby certify that the above and foregoing is a true. correct and complete transcript of the proceedings had in the matter of the adoption of Odile Musson Hood et al., minors as the same appears of record in this office in Vol. 429, Record of Deeds, page 258.

Given under my hand and official seal at office in Birmingham, Alabama, this the 19th day of December, 1910.

(Signed) S. E. GREEN,
Judge of Probate.

EXHIBIT B TO BILL OF COMPLAINT.

Filed Feb. 11, 1911. Chas. J. Allison, Clerk.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, Do Hereby Certify, That the annexed document is a true and correct copy of the original on file and of record among the archives of my office in the matter entitled "In the matter of the Minor Children of J. B. Hood," and under the number 95,756 of the docket of this Honorable Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court, at the City of New Orleans, on this 20th day of January, in the year of our Lord, one thousand nine hundred and eleven and in the 135th year of the Independence of the United States of America.

(S'g'd) T. CONNELL, *Clerk.*

12 I, T. C. W. Ellis, presiding Judge of the Civil District Court for the Parish of Orleans, do hereby certify that Thomas Connell, is the Clerk of said Court, that the same is the court of record, having probate jurisdiction, and that the signature, Thomas Connell, Clerk, to the foregoing certificate is in the proper

handwriting of him, the said Thomas Connell, Clerk; in his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the City of New Orleans, on the 20th day of January, in the year of our Lord one thousand nine hundred and eleven.

(S'g'd) T. C. W. ELLIS,
Presiding Judge.

I, Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that T. C. W. Ellis whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding judge of the Civil District Court of the Parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court, this the 20th day of January, 1911.

(S'g'd) T. CONNELL, *Clerk.*

13 No. 41,532 of the Second District Court. Transferred to the Docket of the Civil District Court. No. 95,796.

In the Matter of the Minor Children of J. B. Hood.

To Hon. A. L. Tissot, Judge of the Second District Court, for the Parish of Orleans, in the State of Louisiana:

The petition of Geo. T. McGehee and Elizabeth B. McGehee, wife of the aforesaid George T McGehee, being duly authorized to appear and act herein by her said husband, with respect sets forth:

That your petitioners are husband and wife, residents of Woodville, Mississippi, and said George T. McGehee being by a occupation a planter; that they are desirous of adopting and rearing as their own children, the minors, Odile Musson Hood and Ida Richardson Hood, aged respectively, three years, twin daughters of the late John B. Hood and Anna Marie Hennen, both late of this City, deceased; that said minors are orphans and their grandmother, Eleanore R. Hennen has been recognized and appointed as their tutrix; and that said decedents, John B. Hood and Anna M. Hennen left ten children, entirely helpless, without means, and petitioners, with a view to benefit said Adele Musson Hood and Ida Richardson Hood and afford them the advantages of a liberal education and proper maintenance, solicit the authority to accept them and rear them as their own children.

Wherefore, the premises considered and the annexed consent of the grandmother and tutrix of said minors being also considered your petitioners pray that they be permitted to adopt the aforesaid minors and to appear before Andrew Hero, Jr., Notary Public of this Parish, to sign & execute the necessary act of adoption;
14 and that all other orders be granted as may be necessary in the premises.

(S'g'd) G. T. McGEHEE.
(S'g'd) E. B. McGEHEE.

I authorize my wife to sign the above & prosecute these proceedings.
(Signed) G. T. McGEHEE.

We, Eleanora R. Hennen, the tutrix, and Walter V. Crouch, under-tutor of the within named minors. declare that we have rad and taken cognizance of the within petition, and considering that the desired adoption is to the benefit and advantages of said minors, consent that the prayer of said petitioners be granted, and that they be authorized to adopt the within named minors.
(Signed) ELEANORA R. HENNEN, *Tutor.*
(Signed) WALTER V. CROUCH, *Under tutor.*

Order.

Let the petitioners be authorized to adopt the within named minors Odile Musson Hood and Ida Richardson Hood, as prayed for; and they are hereby referred to Andrew Hero, Jr., Notary Public of this Parish, for the purpose of executing the requisite act of adoption in the premises.
New Orleans, March 16th, 1880.
(Signed) ELEANORA R. HENNEN, *Tutor.*
A True Copy.
(Signed) WALTER V. CROUCH, *Under Tutor.*

15 EXHIBIT C TO BILL OF COMPLAINT.

Filed Feb. 11, 1911. Chas. J. Allison, Clerk.

Revised Civil Code of Louisiana in Force at the Time of the Adoption.

"Art. 214. Who may adopt and how. Any person may adopt another as his child, except those illegitimate children whom the law prohibits him from acknowledging. but such adoption shall not interfere with the rights of forced heirs.
The person adopting must be at least forty years old and must be at least fifteen years older than the person adopted.
The person adopted shall have all the rights of a legitimate child in the estate of the person adopting him, except as above stated.
Married persons must concur in adopting a child. One of them cannot adopt without the consent of the other."
By Act 31 of 1872 of Louisiana, it is provided:
"That any person above the age of twenty years shall have the right, by act to be passed. before any parish recorder or Notary Public, to adopt any child under the age of twenty-one years, provided that if such child shall have a parent, or parents. or tutor, that the concurrence of such parent or parents or tutor, shall be obtained, and as evidence thereof shall be required to sign said act," and such other acts as were in force at the time of the adoption proceedings.

16 EXHIBIT D TO BILL OF COMPLAINT.

Filed Feb. 11, 1911. Chas. J. Allison, Clerk.

THE STATE OF ALABAMA,
Jefferson County:

H. J. Sharritt and Wife
to
Geo. T. McGehee.

Know all men by these presents. That for and in consideration of Ten Thousand Four hundred and fifty dollars, to the undersigned grantors H. J. Sharritt and Jude I. Sharritt, his wife, in hand paid by Geo. T. McGehee, the receipt wherof is hereby acknowledged, we do grant, bargain, sell and convey unto the said Geo. T. McGehee the following described real estate to wit: The E. ½ of S. W. ¼ of Section 32, Township 16 R. 2 West and Also All of the East ½ of N. W. ¼ of Section 5, in Township 17, Range 2 West, which lies North of Five Mile Creek, Excepting about fifteen acres thereof lying on said Creek which is more particularly described in a deed from H. J. Sharritt to Asa J. Sharritt and excepting one half square acre around the grave of Mrs. Morry Robinson in the N. E. ¼ of S. W. ¼ of Section 32, Tp. 16, R. 2 West, to which half acre said Sharritt is to have free access and right of ingress and egress. situated in Jefferson County, Alabama.

To Have and to Hold *To* the said land to the said Geo. T. McGehee, heirs and assigns forever. And we do for our heirs, executors and administrators, covenant with said Geo. T. McGehee, his heirs and assigns, that we — lawfully seized in fee simple of said premises; that they are free from all incumbrances, and that we have a good right to sell and convey the same as aforesaid, that we will, and our heirs, executors and administrators shall warrant and defend the same to the said Geo. T. McGehee, his heirs, executors and assigns forever, against the lawful claims of all persons.

17 Given under our hand and seals, this 3rd day of December, 1886.

H. J. SHARRITT. [L. S.]
her
JUDE I. (X) SHARRITT. [L. S.]
mark

Witness:
JOHN N. WEBB,
JAMES F. WEBB.

THE STATE OF ALABAMA,
Jefferson County:

I, John Vary, Notary Public in and for said County, in said State, hereby certify that H. J. Sharritt and Jude I. Sharritt, whose names are signed to the foregoing conveyance, who are known to me, ac-

knowledged before me on this day, that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand 3rd day of December, 1886.

JOHN VARY,
Notary Public.

THE STATE OF ALABAMA,
Jefferson County:

I, John Vary, Notary Public in and for the County and State aforesaid, do hereby certify that on the 3rd day of December, 1886, came before me the within Jude I. Sharritt, known or made known to me to be the wife of the within named H. J. Sharritt, who being by me examined separate and apart from the husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of her husband.

In witness whereof, I hereunto set my hand and seal, this 3rd day of December, 1886.

JOHN VARY,
Notary Public.

18 THE STATE OF ALABAMA,
Jefferson County:

I hereby certify that this conveyance was filed for Registration in this office on the 4th day of March, 1887, and was recorded in Vol. 87, Record of Deeds, page 136.

M. T. PORTER,
Judge of Probate.

THE STATE OF ALABAMA,
County of Jefferson, Probate Court:

I, S. E. Greene, Judge of the Probate Court in and for said County, in said State, hereby certify that the above and foregoing is a true, correct and complete transcript of a conveyance from H. J. Sharritt & Wife to Geo. T. McGehee, together with the acknowledgments and filing thereof, as the same appears of record in my office Vol. 87, Record of Deeds, page 136.

Given under my hand and official seal at office in Birmingham, Ala., this the 19th day of December, 1910.

(Signed) S. E. GREENE,
Judge of Probate.

19 *Order Allowing Amendment.*

Filed March 20th, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

In Equity. No. 214.

IDA RICHARDSON HOOD et als., Complainants,
vs.
J. B. MCGEHEE et als., Respondents.

Complainants having applied to the Court for leave to amend their bill, as set forth in their motion this day filed, it is ordered that said motion be, and the same hereby is allowed.

It is further ordered, that the amendments may be noted on the original bill in red ink.

This 20th day of March, 1911.

W. I. GRUBB, *Judge.*

20 *Amendment to Bill.*

Filed March 20th, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

In Equity.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. MCGEHEE et als., Respondents.

Now come the complainants, Ida Richardson Hood and Odile Musson Holland, and move the Court for leave to amend the bill as follows:

1. By striking out of the bill wherever it occurs, the name "Arthur Herwin McGehee," and inserting in lieu thereof the name "Arthur Merwin McGehee," which is the correct name of the person intended to be referred to.

2. By striking out of the bill entirely, as a party respondent, "Arthur Harry McGehee."

3. By adding after the name "Annie B. McGehee," where the same first occurs in said bill, the words, "who is non compos mentis and has no guardian."

4. By inserting after the words "the following described piece or parcel of land," where the same occur in the second paragraph of the bill, the words "situated in Jefferson County, Alabama."

21 5. By striking out the word "blood" where the same occurs in the second paragraph of the bill, and inserting in lieu thereof, the word "collateral;" and by adding at the end of the second paragraph these words: "The said Geo. T. McGehee left surviving him neither father nor mother, nor children born of his body, nor dscendants of such children. The respondents are collateral kin of the said Geo. T. McGehee, and are, if complainants are not the heirs of said Geo. T. McGehee, entitled to inherit, his next of kin, entitled to inherit his estate; but this last averment is without prejudice to the contention set forth in the third paragraph of the bill."

PERCY, BENNERS & BURR,
Solicitors for Complainants.

PACE, STIMPSON & ARROYO,
Of Counsel.

STATE OF ALABAMA,
Jefferson County:

Augustus Benners, being duly sworn, deposes and says, that he is one of the attorneys for complainants, and authorized to make this affidavit for them, and that the averments of the bill as amended by the foregoing amendment are true to the best of his knowledge, information and belief.

(Signed) AUGUSTUS BENNERS.

Subscribed and sworn to before me this 20th day of March, 1911.

T. B. MORTON,
Deputy Clerk, U. S. Court.

22 *Demurrers of Defendants.*

Filed April 12, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Southern Division, Northern District of Alabama.

In Equity.

IDA RICHARDSON HOOD et al., Complainants,
v.
J. B. MCGEHEE and Others, Defendants.

The demurrer of J. B. McGehee, Caroline McGehee, Scott McGehee, Mason Snowden, Kate B. Gender, Kate B. Semple, Mary Burress Semple, John Hanson Kennard, Laura McGehee Davis, Harry Trimble McGehee, Arthur Merwin McGehee, Mary Cornelia McGehee, Edward E. McGehee, John Nathaniel McGehee, Robert B. Semple, John Burress Semple, Thomas C. Kennard, Dr. Edward L. McGehee, Charles G. McGehee, Annie B. McGehee, Stella McGehee, the adult defendants in the above entitled cause, to the bill of com-

plaint lately exhibited against them by Ida Richardson Hood and Odile Musson Holland in said Court:

These defendants, by protestation, not confessing or acknowledging any or all of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to the said bill of complaint; and for grounds of demurrer said defendants show as follows:

23 (1) For that it appears in and by the complainants' own showing in the said bill of complaint that they are not entitled to the relief prayed for in and by the said bill of complaint against these defendants, or either of them.

(2) For that it appears in and by the said bill of complaint that the same is without equity.

(3) For that it appears in and by the said bill of complaint that there is no equity therein.

(4) For that it appears in and by the said bill of complaint that the said complainants have no interest or title in the lands described in the said bill of complaint, the title to which is — and by the said bill of complaint sought to be qui-ted.

(5) For that it appears in and by the said bill of complaint that these defendants, together with Edward John Percy, Eugenia Corrine Percy and Arthur Harry McGehee, are the owners of the lands described in the said bill of complaint as heirs of the said George T. McGehee.

(6) For that it appears in and by the said bill of complaint that the said complainants seek relief as the adopted children of George T. McGehee, and yet the averments of the said bill of complaint show that the said complainants were adopted by the said George T. McGehee only under the laws of the State of Louisiana, and in accordance with the laws of said State, the home and domicile of the said complainants, and therefore they did not inherit from the said George T. McGehee the lands described in the said bill of complaint, but that the title to the said lands upon the death of the said George T. McGehee descended to and is now vested in the defendants to the said bill of complaint as his only heirs at law.

(7) For that the only claim asserted to the lands described in the said bill of complaint by the said complainant- is as the adopted children of the said George T. McGehee, and yet said adoption was under the laws of the State of Louisiana, and had no extra territorial effect, so far as concerns the title to the said lands, and there-

24 fore the said bill shows on its face that the said complainants have no title to or interest in said lands.

(8) For that under the laws of the State of Alabama controlling the descent of lands, the said defendants, and not the said complainants, are the heirs at law of the said George T. McGehee, and as such inherited said lands upon the death of the said George T. McGehee, and they are therefore now clothed with the legal title thereto, and yet said bill of complaint fails to set up any equitable interest in said lands or any reason why the said complainants should

have any equitable relief as prayed for in and by the said bill of complaint.

(9) For that the provisions of the Constitution of the United States, referred to and set up in the said bill of complaint, do not operate to vest any legal or equitable title to said lands described in the said complaint, or authorize any relief in their behalf.

TILLMAN, BRADLEY & MORROW,
Solicitors for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

JNO. P. TILLMAN,
Solicitor for Defendants.

STATE OF ALABAMA,
Jefferson County:

Personally came before the undersigned, a notary public, in and for said County and State, John P. Tillman, who, having been by me first duly sworn, deposes and says, that all of the defendants in the above entitled cause are non-residents of the State of Alabama, and that he is one of the solicitors of the defendants filing
25 said demurrers, and that he is also agent of the said defendants, and that the foregoing demurrer is not interposed for delay.

(Signed) JNO. P. TILLMAN.

Sworn to and subscribed before me this 10th day of April, 1911, as witness my hand and seal of office.

(Signed) CATHERINE SHEA,
Notary Public,
Jefferson County, Alabama.

EXHIBIT E TO THE BILL.

Filed June 10, 1911. Chas. J. Allison, Clerk.

To the Chancery Court of Wilkinson County:

The petition of R. M. McGehee, of County ——, shows to the Court, that his uncle George T. McGehee died on the 7th day of Feb'y, 1906, having at the time of his death a fixed place of residence in said County, and leaving a large landed property and personal property, amounting to about twenty-two hundred dollars.

That the sole heirs at law of deceased are his adopted children, Odile Hood Holland and Ida Richardson Hood, who reside in the City of New York, and both over the age of twenty-one years, and who have, by petition to this Honorable Court, prayed that your petitioner be appointed administrator with the will annexed of deceased estate, and which petition is presented herewith. And petitioner also presents a copy of said Articles of Adoption which was found among deceased'- papers after his death, and which is marked Exhibit "A."

Petitioner further shows to the Court that on the 24th day of Feb'y, 1899, said deceased executed an instrument of writing wholly written and subscribed by himself, and which your petitioner presents for probate as the last will and testament of said George T.
26 McGehee, deceased, and by which he devised all of his property to his legal heirs, the above named Odile Hood Holland and Ida Richardson Hood, as is shown by said will.

That no executor is named in said will and administration being necessary, your petitioner prays that he be appointed administrator with the will annexed, upon his complying with the law and orders of this Honorable Court, and as in duty bound, etc.

R. M. McGEHEE.

BRAMLETTE & TUCKER, *Sol'rs.*

STATE OF MISSISSIPPI,
Wilkinson County:

Personally appeared before me, C. A. Coon, Clerk of the Chancery Court of said County, the above named R. M. McGehee, who makes oath that the foregoing petition is true, as he believes.

R. M. McGEHEE.

Subscribed and sworn to before me, Feb'y 24th, 1906.

C. A. COON, *Clerk.*

27 EXHIBIT A.

(Filed with foregoing petition of R. M. McGehee.)

Will of Geo. T. McGehee.

GEO. T. McGEHEE, GLEN BURNIE PLANTATION,
WOODVILLE, MISS., Feb'y 24, 1899.

MY DEAR DAUGHTERS: Your letters Odile's of the 13th & Ida's of the 19th duly rec'd & appreciated. I haven't written for nearly two weeks because I was physically & Mentally incapable of any such effort. The terrible weather—snow on the ground for a whole week, together with my business troubles broke me up entirely & it has only been for the part week that I have been able to get out to look after my business.

The prospects here are gloomy as they can be 5 c't cotton has ruined me and if I could by giving up all my property come out with a thousand or two dollars to start again I would be glad. I thou't that I had Rose Hill sold but ther's many a slip between the cup & lip & my usual luck has followed me & the sale is off. I am now trying to make arrangements to run this place & Kellers (Rose Hill you know rents for barely enough to pay notes due "Delta Loan Co.") & hope between now and judgment day (which is December 1st) to sell either or both Rose Hill & the Keller place. Your loan to me is fully protected in a deed of trust on this place, but I had hoped by a sale of one or both of the others to have replaced your

loan & so made you easy as well as held my home. Five cent cotton and 10% interest has fixed me. God only knows how it will all end, but at any rate your interest will be fully protected. I write thus plainly that you may know how my affairs are. You didn't seem to appreciate my financial condition when you left & it is proper that you should be fully informed in view of possible accident. Besides this house and its contents, I had an insurance of $2,000 in
28 Knights of Honor which I will keep alive in your favor as long as I am able to do so. I have burnt up my will because you are my natural or rather legal heirs under the Act of Adoption & will inherit all that I die possessed of after my debts are paid. Library and all except my gold watch which I want to go to Schanniber McGehee & my & Lilly's letter & trinkets in my armour which go to Kate Ginder. Everything else of mine is to be yours equally divided.

This looks like a last will and testament—will be valid as such. So take — of it for I don't expect to make any regular will. But don't let this make you sad, it is only a wise precaution which a man of 66 years ought to take to save his heirs trouble. I may live to bury one or both of you (which God forbid) but 'tis best to look ahead.

I know we have suffered more, both people & animals, from this unprecedented weather than you Yankees have, for we were not prepared for it. There is snow still to be found in shaded corners, two weeks old. The luonweas (?) & wild peach & Cape jes-amine are all killed the McCartuey rose hedge around Van Eaton's lot & the cane in the brake are all dead. Many cattle and mules frozen in the fields & the oat Crop completely dead. The only comfort that we have is that yellow fever is dead too.

Today the Ther. is falling again & the Bureau predicts more snow. Thank God Sara & I have plenty of good wood & so feel sure of surviving it.

Sal came back home last Sunday and will spend a week or more with me before returning to Masons. It is a great comfort I tell you to have some one to carry the keys. She is well and strong again. Walks up to see Stella now & then.

Mason dined with us yesterday, looks pretty well and wants me to shut up & come & live with him. Looks as though I might yet be reduced to that don't it?

Genie in N. O. Not taking music but what!

Yr. Loving papa,

G. T. McGEHEE.

29 STATE OF MISSISSIPPI,
Wilkinson County:

Personally appeared before me C. A. Coon, Clerk of the Chancery Court of said County, D. C. Bramlette & J. A. Davidson, who being duly sworn, depose and says, that they were acquainted with G. T. McGehee in his lifetime, and are familiar with his handwriting and signature, and further say that a certain instrument of writing, a letter enclosed in an envelope and addressed to Misses O. M. & I. R. Hood, c/o W. S. Post, Esq., Bernardville, N. J., purporting to be

the last will and testament of said G. T. McGehee, deceased, dated Feb. 24, 1899, is wholly written and subscribed by said G. T. McGehee, and the above mentioned address is wholly written by him, and that said testator was of sound and disposing mind and memory, and more than twenty-one years of age at the date of said will.

D. C. BRAMLETTE.
J. A. DAVIDSON.

Subscribed and sworn to before me Feb'y 24, 1906.

C. A. COON, *Clerk.*

No. 465.

Est. GEO. T. MCGEHEE, Dec'd.

This cause coming on this day upon the petition of R. M. McGehee, for probate on an instrument of writing as the will of said deceased, and it appearing from the affidavit of D. C. Bramlette and J. A. Davidson, witnesses and reliable persons, that said will was wholly written and subscribed by said G. T. McGehee, dec'd, and it further appearing that said instrument is fully and legally established as the true and original last will and testament of said G. T. McGehee, deceased, and that the said deceased was on the 24th of Feb'y, 1899, the date of said will, of sound and disposing mind and memory, and more than twenty-one years of age, it is ordered and decreed that said instrument of writing be and the same hereby is probated and ordered to be recorded as the last will and testament of G. T. McGehee.

And it appearing that no executor is named in said will, and it further appearing that the heirs of law of deceased and the devisees under said will have asked that R. M. McGehee be appointed administrator of deceased, it is therefore ordered that said R. M. McGehee be and he is hereby appointed administrator with the will annexed of the estate of deceased, and that he execute bond in the sum of twenty-five hundred dollars, and taking the oath prescribed by law, and that letter issue to him.

It is further ordered that H. S. White, J. H. Walker, G. H. White and J. M. Sessions be appointed appraisers, and that a warrant of appraisement issue to them.

Ordered Feb'y 24, 1906.

C. A. COON, *Clerk.*

Letters of Administration.

STATE OF MISSISSIPPI,
Wilkinson County:

By the Chancery Court of said county:

Whereas, Geo. T. McGehee, deceased, late of said County, died intestate, as we are informed, having whilst he lived, and at the time of his death, divers goods and chattels, rights and credits, within this state; and we, desiring that the said goods and chattels,

rights and credits may be well and truly administered, converted and disposed of, do hereby grant unto R. M. McGehee, administrator Cum Testamento Annexo full power, by the tenor of these presents, to administer the goods and chattels, rights, and credits, which to the said deceased, in his lifetime, and at the time of his death,
31 did belong; to ask, levy, recover and receive the same, and pay the debts in which the deceased stood bound, so far as the goods, chattels, rights, credits, lands, tenements and hereditaments of the said deceased will extend, according to their rate and the order of the law, to make a true and perfect inventory of said goods and chattels, rights and credits, and the same to exhibit in the office of the Clerk of this Court, at or before the expiration of *these* months from the date hereof, and to render a just account of the said administration, when thereunto legally required; and the said R. M. McGehee, C. T. A. hereby ordained administrator C. T. A. of all and singular the goods and chattels, rights and credits of the said deceased.

Witness the Honorable W. P. S. Ventress, Chancellor of the Fourth District, this 24th day of Feb'y, A. D. 1906, and the seal of said Court hereunto affixed.

C. A. COON, *Clerk.*

STATE OF MISSISSIPPI,
Wilkinson County:

I, C. A. Coon, Clerk of the Chancery Court in and for said County and State, do hereby certify that the foregoing ten pages contain a true and correct copy of the petition, exhibit will and Decree and Letters in estate of Geo. T. McGehee, deceased, the same as fully appears of record and on file in said Chancery Clerk's office, said County and State.

Witness my hand and seal of said Court this 27th day of March, 1906.

C. A. COON, *Clerk.*

32 *Chancellor's Certificate.*

STATE OF MISSISSIPPI,
Wilkinson County:

I, W. P. S. Ventress, Chancellor, 4th Judicial District (sole and presiding), do hereby certify that C. A. Coon, whose signature appears to the foregoing certificate and attestation, is and was, at the date thereof, Clerk of said Court, duly elected, qualified and commissioned; that his said certificate is in due form of law, and that all of his acts in the premises are, and ought to be entitled to full faith and credit in judicature and thereout.

Witness my hand and seal at Woodville, Mississippi, this 27th day of March, A. D. 1906.

W. P. S. VENTRESS.

STATE OF MISSISSIPI,
Wilkinson County:

I, C. A. Coon, Clerk of the Chancery Court in and for said County and State, do hereby certify that W. P. S. Ventress, whose genuine signature appears to the foregoing certificate is and was at the date thereof, Judge of said Court (sole and presiding), in and for said County, duly appointed, qualified and commissioned. and that all of his acts in the premises are, and ought to be, entitled to full faith and credit in judicature and thereout.

Witness my hand and seal of Court, at Woodville, Mississippi, this 27th day of Mch., A. D., 1906.

C. A. COON, *Clerk.*

33 *Motion to Amend Bill.*

Filed June 10, 1911, Chas. J. Allison, Clerk.

In the District Court of the United States, for the Southern Division of the Northern District of Alabama.

IDA RICHARDSON HOOD et als., Complainants,
vs.
J. B. MCGEHEE et als., Respondents.

Now come complainants, Ida Richardson Hood and Odile Musson Holland, and move the Court for leave to amend the bill as follows:

By inserting in the second paragraph of the bill immediately after the words "your orator states that said Geo. T. McGehee departed this life on the 5th day of February, 1906, and Elizabeth T. McGehee on February 22, 1897," these words: "Said Geo. T. McGehee on or about February 24th, 1889, wrote a letter to complainants, which after the death of said Geo. T. McGehee was probated as the will of said Geo. T. McGehee, in the Chancery Court of Wilkinson County, Mississippi, which County was the place of his residence at the time of his death. A true copy of said letter and of the proceedings probating the same as the will of the said Geo. T. McGehee is made a part of this bill as Exhibit 'E.'" At the time of said adoption and thereafter, the said Geo. T. McGehee resided in Mississippi and at the time of said adoption and thereafter owned no real estate in Louisiana.

PERCY, BENNERS & BURR,
Solicitors for Complainant.

PACE, STIMPSON & ARROYO,
Of Counsel.

34 STATE OF ALABAMA,
Jefferson County:

Augustus Benners, being duly sworn, deposes and says that he is one of the attorneys for complainants and that the averments of

the bill as amended by the foregoing are true to the best of his knowledge, information and belief.

AUGUSTUS BENNERS.

Subscribed and sworn to before me this 9th day of June, 1911.

DAVID B. ADAMS,
Notary Public.

Order Allowing Amendment.

Filed June 10, 1911, Chas. J. Allison, Clerk.

In the District Court of the United States, for the Southern Division of the Northern District of Alabama.

IDA RICHARDSON HOOD et als., Complainants,
vs.
J. B. McGEHEE et als., Respondents.

Complainants having moved the court on this day to be allowed to amend their bill, and solicitors for respondents appearing in response to said motion, and the motion being understood by the court.

35 It is ordered, adjudged and decreed that complainants be allowed to amend their bill as prayed.

Given this 10th day of June, 1911.

W. I. GRUBB, *Judge.*

Demurrers to Bill of Complaint.

Filed June 12, 1911, Chas. J. Allison, Clerk.

In the District Court of the United States, for the Southern Division of the Northern District of Alabama.

IDA RICHARDSON HOOD et als., Complainants,
vs.
J. B. McGEHEE et als., Respondents.

The Demurrer of J. B. McGehee and Others, Defendants, who have Heretofore Appeared in this Case, by their Solicitors, to the Bill of Complaint in said Cause, as the same has been Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint as amended contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill of complaint, and for grounds of demurrer, said defendants show and state to the Court the same grounds of demurrer stated and set forth in their demurrer to the original bill of complaint.

And the said defendants also separately demur to that part of said bill of complaint as amended, which seeks a specific
36 performance of the proceedings of adoption set up in said bill of complaint, as amended, as a contract or agreement as therein stated, and for grounds of demurrer to that part of said bill of complaint as amended, the said defendants show as follows:

(1) For that it appears in and by the complainants' own showing in that part of said bill of complaint as amended, that they are not entitled to the relief prayed in respect thereto.

(2) For that it appears in and by the said bill of complaint as amended that that part thereof so seeking specific performance, as a whole, is without equity.

(3) For that it appears in and by the said bill of complaint as amended, that the said proceedings relied upon, do not constitute an agreement or contract as claimed in and by said bill of complaint as amended, but on the contrary, shows a complete act of adoption under the statutes of Louisiana in such cases made and provided, and that under said adoption proceedings, and the laws of the State of Alabama, the said complainants have no interest, legal or equitable, in and to the said real estate, described in the said bill of complaint as amended.

(4) For that it appears in and by the said bill of complaint as amended, that there was no such agreement or contract as claimed therein, and, therefore, the said complainants are entitled to no relief.

(5) The said defendants also demur to that part of said bill of complaint, which set up as a last will and testament, a certain letter written by the said George T. McGehee to the complainants, and which is exhibited to the amendment to said bill of complaint, and for grounds of demurrer shows and states to the Court the same grounds of demurrer stated in support of the defendants' demurrer to the said bill of complaint as amended as a whole; and also upon the further grounds, to wit:

(6) For that it appears in and by the said bill of complaint, as amended, that the said instrument was not executed in the
37 presence of two subscribing witnesses, and was not attested by two subscribing witnesses, as required by the statutes of Alabama in such cases made and provided.

(7) For that it appears in and by the said bill of complaint, as amended, that said instrument is not sufficient to pass any title, legal or equitable, in the complainants, to the lands described in the said bill of complaint.

(8) For that it does not appear in and by the said bill of complaint, as amended, that said instrument has ever been probated in the State of Alabama, as required by the laws of said State.

(9) For that it appears in and by the said bill of complaint as amended, that the said instrument in no way operates as a contract creating in the complainants any title, legal or equitable, in the property described in the said bill of complaint, as amended.

TILLMAN, BRADLEY & MORROW,
Solicitors for Defendants.

STATE OF ALABAMA,
Jefferson County:

Personally came before the undersigned, a Notary Public in and for said County and State, John P. Tillman, who having been by me first duly sworn, deposes and says that all of the defendants in the above entitled cause are non-residents of the State of Alabama, and that he is one of the solicitors of the defendants, filing said demurrers, and that he is also the agent of the said defendants, and that the foregoing demurrer is not interposed for delay.

JNO. P. TILLMAN.

Sworn to and subscribed to before me on this, the — day of June, 1911, as witness my hand and seal of office.

CATHERINE SHEA,
Notary Public.

38 I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

JNO. P. TILLMAN.
Solicitor for Defendants.

Opinion Giving Conclusions of the Court for Sustaining Demurrer to Bill of Complaint as Amended.

Filed June 20, 1911, Chas. J. Allison, Clerk.

IDA RICHARDSON HOOD et al.
v.
J. B. MCGEHEE et al.

(Circuit Court, N. D. Alabama, S. D., June 20, 1911.)

In Equity. No. 214.

Percy, Benners & Burr, for complainants.
Tillman, Bradley & Morrow, for defendants.

GRUBB, *District Judge:*

The bill of complaint in this cause was filed to determine the title to real estate in Alabama of which the plaintiffs are in possession through a tenant. The common source of title is George T. McGehee. The plaintiffs are his adoptive children by proceedings had under the laws of Louisiana. The defendants are the next of kin, who would inherit his real estate in Alabama, under its statute of descents, McGehee having died intestate, unless the plaintiffs are entitled to it.

The plaintiffs support their right (1) under the statute of descents of Alabama, claiming to be children of intestate, and (2) by virtue of a contract claimed to have arisen from the Louisiana adoption

proceedings, though ineffective in Alabama, between McGehee and wife, on the one hand, and the plaintiffs and their tutrix on the other hand; they being, at the time, minors of tender years, the effect of which is alleged to have been to vest title in them in all the property of McGehee and his wife upon their deaths.

39 The defendants deny that title to the lands in Alabama passes to plaintiffs under either theory.

(1) The Supreme Court of Alabama, in the case of Brown v. Findley, 157 Ala., 424, construed the Alabama statute of descents so as to exclude adopted children, by proceedings in other states, from the term "children" as used in Subdivision 1 of Section 3754 of the Alabama Code, 1907, which provides for the descent of real estate in this state, holding that foreign adoption statutes had no extra territorial force. The Supreme Court also, in the same case, declared this construction to be a fixed rule of property in Alabama. This concludes the Federal Court, unless by reason of the violation of some of the provisions of the Federal Constitution, even though the Alabama rule is, as appears to be the case, contrary to the current of authority. Dickson v. Wildman, 183 Fed., 398; Clarke v. Clarke, 178 U. S., 186; Simpson v. Wisner Cox Lumber Co., 170 Fed., 52.

The plaintiffs claim that the "full faith and credit" clause of the Constitution requires the Alabama Court, not only to recognize the Louisiana adoption proceedings as valid to confer on the plaintiffs the status of adopted children, but to confer on them the same rights of inheritance to real estate in Alabama as are conferred on natural children. Conceding that the Louisiana adoption proceedings come within the meaning of public acts, records or judicial proceedings and are entitled to full faith in the sense of compelling recognition by other states of the adoptive filial relations created by them, it does not follow that the right of inheritance to real property follows such status, when recognized. Each state has exclusive jurisdiction of the regulation of the transfer and descent of real estate within its limits. It would be competent for the legislature of Alabama to deny the right to inherit real property to children adopted in its own courts by its own procedure. It would be competent for it to confer such rights on children of its own adoption and deny it to those of the adoption of foreign states. This is what Alabama legislation, as construed by its court of last resort, has accomplished. Section 5202, Alabama Code of 1907, provides

40 a procedure to be followed for the adoption of children so as to make them capable of inheriting in Alabama real and personal property of the adoptive parent. The child adopted in Alabama under this section is given the right by the terms of Section 5202 and without necessity of resort to the statute of descents. No right to inherit is conferred on children of foreign adoption by Section 5202. The Supreme Court construed the word "children" in the statute of descents (Subd. 1, Sec. 3754, Code, 1907) as not including children of foreign adoption. It was competent for the legislature to so enact and for the court to so construe its enactment, the state being absolutely free to regulate the descent of real estate within its limits as it sees fit. For these reasons the plaintiffs cannot

claim the lands described in the bill under the Alabama statute of descents. Olmstead v. Olmstead, 216 U. S., 386; Fall v. Eastin, 215 U. S., 1.

(2) The plaintiffs contend further that Louisiana adoption proceedings have the effect of a contract between the adopting parents and the adopted children to give them the same rights in the parents' real estate upon their death as if they were the natural children of the parents, and that this contract will be decreed to be specifically performed by a court of equity, after full performance by the parties. The act of adoption contains a declaration of adoption by McGehee and wife, a provision obligating them to support, maintain and educate the adopted children, and an agreement investing "them with all the rights and benefits of legitimate children in their estate, in the same manner and to the same extent" as if they "had been the daughters of said George T. McGehee and Elizabeth B. McGehee." It also contains an agreement on the part of their tutrix to surrender the entire parental authority over them to McGehee and wife. The bill avers that the adopting parents "after their adoption and through many years of association that followed" not only tenderly reared, educated and carefully guarded them from all harm, but in truth and in fact, they were beloved and cherished by said adopting parents "as if they were their own children." The bill avers the performance of the children also in these words,
41 "that your orators on their part performed all the duties of children towards their adopting parents."

The weight of authority seems to hold that ineffective adoption proceedings in themselves, or when accompanied by sufficiently definite promise to leave all or a certain part of the adopting parents' property to the adopted child upon the death of the parents, may amount to a contract, which though made for the children by a third person may, when fully performed by the children, be specifically enforced against the heirs of the adopting parents. This has been held to be the rule in a State (New Jersey) in which there was no statute authorizing adoption, and also in a State (Michigan) in which such statute had been declared unconstitutional. In all cases, certainty in terms, fairness and full performance by the children are held to be requisite. The cases supporting the doctrine are: Jeffers v. Jacobson, 48 Fed., 21, cases cited Winne v. Winne, 166 N. Y., 263, 59 N. E. Rep., 832; Wright v. Wright, 99 Mich., 170; Sharkey v. McDermott, 91 Mo. 647; Van Dyne v. Vreeland, 11 N. J., 370; Teats v. Flanders, 118 N. W., 660; Healy v. Simpson, 113 Mo. 340 Van Tine v. Van Tine, 15 Att. Rep., (N. J.), 244; Chehak v. Battles, 110 N. W. Rep. (Iowa), 330; Cyc., Vol. 1, page 936, and cases cited in note; 1 Am. & Eng. Enc. of Law, (2d Ed.), Page 728 and note; Fusilier v. Masse, 4 La., 424. Contra: Wallace v. Rappalge, 103 Ill., 229; Wallace v. Lay, 105 Ind., 522; Shearer v. Weaver, 56 Iowa 578; Albring v. Ward, 100 N. W., 609; Bowins v. English, 101 N. W., 204.

The question then is whether in this case the notarial act of adoption can be construed as a contract to leave the plaintiffs an interest in intestate's property, wherever situated and whenever ac-

quired, owned by him at the time of his death, for it is conceded that no such contract exists in this case apart from the notarial act.

The language of the notarial act, with reference to the rights of inheritance conferred by it on the plaintiffs, is substantially that of the Louisiana adoption statute. Its use in the notarial act has, therefore, no significance other than to express what the law would imply. If it had been omitted, the legal meaning of the notarial act would have been unchanged. The adoption proceedings
42 clearly show that the parties were proceeding under the Louisiana act and with no purpose to confer rights on the adopted children, other than those conferred by adoption under that law.

If then any such contract exists, it must be one that is implied from the proceedings of adoption, as distinguished from any peculiar language in which they are couched. The principle of giving contractual effect to defective adoption proceedings, in order that the intention of the parties may not fail of accomplishment by reason of such defect, has no application to the facts of this case; for here the proceedings are valid and sufficient to create the relation of adopted children with all their incidental personal and property rights. The intention of the parties was in no way disappointed either as to the fact of adoption or as to the rights conferred by it on plaintiffs. They accomplished all they expected. This is especially true since, when the adoption proceedings were had the adopting parents owned no property in Alabama, and could at that time have had no disappointed expectations as to the effect of the Louisiana adoption upon the transmission of such property; and the Louisiana proceedings were fully recognized in Mississippi, in which state the adopting parents were then domiciled and presumably owned property. So there was no intention in the minds of the adopting parents or of the tutrix at the time of the adoption that failed of accomplishment as a result of the Louisiana proceeding. It accomplished all the parties then had in mind or desired, and if the parents had never acquired property in Alabama, thereafter, no question of its sufficiency would have been presented. No unexecuted intention would have remained for enforcement by a decree.

The original sufficiency of the adoption to answer the intentions of the parties was turned into its present insufficiency by reason of the subsequent acquisition by the adopting parent of real estate in Alabama, a state which did not recognize the Louisiana proceedings as effective to transmit property under its statute of descents. This subsequently occurring fact cannot affect the intention of the parties at the time of the adoption or change the transaction, then entered into by them, nor can it justify the implication of an
43 agreement to do what the parties then had no intention of doing, viz.: of effecting a transfor of property by a method other than the adoption proceedings. The Louisiana proceeding was effective, in view of the location of the property then owned by the adopting parent, to do all the parties intended and for that reason it was resorted to. The inference is irresistible, from its

adequacy to the then needs of the parties, that nothing more was intended by them than adoption. If nothing more than an adoption under the Louisiana law, with its incident property and personal rights, was then intended, there is no room for more to be implied, even though a change of ownership thereafter might make it desirable. The law by implication will not add a feature to the transaction, the occasion for the significance of which did not arise until long after the transaction was completed. The acts and contracts of parties are to be construed by their intentions when the acts were performed or the contracts made, and not by intentions which could have first been entertained only long after the commission of the acts or the making of the contracts.

The parties contented themselves with the adoption of plaintiffs under the Louisiana law because that method at that time answered completely their exigency. The plaintiffs therefore were vested by the adoption proceedings with the rights, and only the rights, of adopted children under the Louisiana law, for this was all the parties to the adoption thought necessary, at that time, to confer on them.

The situation, effected by the adoption, only becoming inadequate when the adopting parent, long afterwards, purchased property in Alabama, the remedy for the situation lay in measures then to be taken to transmit the title to such newly acquired property. This is the general rule that prevails as to subsequently acquired property, not legally affected by a previously executed instrument, though the parties may desire to be so affected.

If there had been an agreement to leave plaintiffs a share in the adopting parent's estate on his death, separate from and independent of the adoption, and the means selected by the par-
44 ties to accomplish the agreement had failed to do so, equity might enforce the agreement by supplying a method in lieu of the ineffective one, selected by the parties. In this case, however, the purpose of the parties was merely to effect the adoption of plaintiffs. They selected the Louisiana law to accomplish the adoption and it did accomplish it. There was no agreement as to property, other than was implied in the adoption, which conferred on plaintiffs the rights of inheritance of adopted children under the Louisiana law. This was all they were entitled to by virtue of the agreement to adopt them, and this they obtained. Even if the adopting parent had owned the Alabama property at the time of the adoption, this would be true. Much more is it true, in view of the fact that the Louisiana adoption proceeding was competent to vest in plaintiffs all the property rights that were then in contemplation of the parties to it.

If the purpose had been to leave to plaintiffs an interest in the estate of the adopting parent, and the adoption under the Louisiana law had been unadvisedly selected as a proper means of accomplishing this, a different case would be presented. In this case, the controlling purpose was the adoption of the plaintiffs, the devolution of the property of the adopting parent to them was secondary and merely incidental to the relation established by the adoption. (Pe-

tition for adoption Complainants' Exhibit "B.") Plaintiffs were only entitled to the property rights of adopted children in Louisiana, and they were acquired by them by the adoption.

The only theory, therefore, on which the plaintiffs' rights can prevail is that there was an agreement, independent of the adoption, to leave to the plaintiffs shares in intestate's property. The moment plaintiffs' rights in the Alabama property are attempted to be worked out through the Louisiana adoption proceedings or the agreement to adopt, effectuated under the Louisiana law, we are confronted with the proposition that parties adopting that method, without further agreement, must intend to confer only such rights as it availed to confer. When it is conceded, as it is, that there is no agreement shown by the record, other than the adoption act, and when it appears that the Louisiana adoption is not recog-
45 nized in Alabama as effectual to transmit real estate under its law of descents, the plaintiffs' case fails.

The cases asserting the principal that enforces a defective adoption proceedings as a contract to adopt and confers on the child the same property rights as the law would have conferred if the adoption had been valid, do not control this case, in which the adoption did not fail from invalidity. That line of cases, in which a contract to devise and bequeath, separate and apart from the ineffectual means selected for its accomplishment, is found to exist, and in which the separate contract is specifically enforced, as in case of a defectively executed will, is to be distinguished from this case, in that in this case the agreement was solely to adopt and the rights of inheritance claimed were a mere incident to the adoption. The agreement to adopt was validly carried out, and the plaintiffs' rights to the property in question failed, not because of any failure to legally carry out the agreement of adoption but because the specific rights claimed were not legally incident to the adoption agreed upon.

The case is that of parties intending to do a specific thing and being mistaken as to its legal effect. If the mutual intent is to do a specific thing, only, mistake as to the effect of the thing intended to be done, cannot affect the rights of the parties. If there is a failure to validly do what parties intend to do, equity may remedy the invalid act and treat, as done, that which the parties intended to do.

Equity, however, never interferes to accomplish that which the parties themselves never intended to do, because either originally or subsequently, it appears to be more equitable than what the parties intended and did. Equity never makes agreements for parties, which it then enforces.

There are subsequent declarations of the adopting parent found in the record, which tend to indicate his belief that his adopted children would acquire at his death all his property through the adoption proceedings. These declarations were based on a mistaken conception of the legal effect of the adoption on the transmission of title to the after-acquired Alabama property. They do not reflect light on what the parties intended to accomplish, at the time

of the adoption, at which time the adopting parent had no
46 property in Alabama. They may indicate a general purpose or desire on the part of the adopting parent that his adopted children should by virtue of the adoption inherit all his property. Such an uneffectuated purpose or desire can neither confer or divest property rights.

The demurrer to the bill as amended is sustained.

Amendment to Bill.
Filed Sept. 7, 1911.

CHAS. J. ALLISON, *Clerk.*

Amendment to Bill.

Filed Sept. 7, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division. In Equity.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. MCGEHEE et al., Respondents.

Now come the complainants, Ida Richardson Hood and Odile Mussom Holland, and move the Court for leave to amend the bill as follows:

By inserting between the words "heirs at law" and "that your orators" on the 12th and 13th lines of paragraph "III" or 3rd and 4th lines from the bottom of page 4 of the bill the words "that neither the said George T. McGehee or his said wife, at the
47 time *for* the aforesaid contract or at any time subsequent thereto, owned any property in Louisiana or elsewhere, except that some time subsequent to the making of said contract the said George T. McGehee did acquire certain property in Mississippi and Arkansas as well as the property in suit; that immediately after the making of the aforesaid contract and when your orators were then of the age of three years (they being twins) the said George T. McGehee and Elizabeth B. McGehee took them from the State of Louisiana to the McGehee home in Mississippi where the said George T. McGehee and wife then and always resided, they assumed the name of McGehee and continued to live with the said McGehees until the said Elizabeth B. McGehee's death and thereafter with the said George T. McGehee, covering a period all told of upwards of nineteen years, during all of which time as well as up to the death of said George T. McGehee they performed the obligations of children under the said contract and rendered valuable services to the said McGehees; that subsequent to the making of said contract and in the year 1894 and for the purpose of relieving the said George T. McGehee from his then serious financial embarrassment and consequent great distress of mind, your orators

procured the sum of $8,600 as their share of the "Hood Relief Fund,"—established by voluntary contributions made throughout the southern states for the benefit of the children of the said late General John B. Hood,—by virtue of certain judicial proceedings had in the State of Mississippi resulting in a decree entered May 14th, 1894, removing their civil disabilities so that they were empowered "to receive and receipt for any and all moneys and property wheresoever situated," and immediately thereafter turned the same over to the said George T. McGehee for the purpose aforesaid; said sum has never been repaid."

(Signed) PERCY, BENNERS & BURR,
Solicitors for Complainants.

PACE & STIMPSON,
of Counsel.

48 STATE OF ALABAMA,
Jefferson County, ss:

Augustus Benners being duly sworn deposes and says, that he is one of the attorneys for complainants, and authorized to make this affidavit for them, and that the averments of the bill as amended by the foregoing amendment are true to the best of his knowledge, information and belief.

(Signed) AUGUST BENNERS.

Sworn to and subscribed to before me this 7th day of August, 1911.

T. B. MORTON,
Deputy Clerk.

Order Allowing Amendment.

Filed Sept. 7, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. MCGEHEE et al., Respondents.

Upon motion of the complainants for leave to amend their bill, as appears by the separate paper writing this day filed, it being made to appear to the Court that defendants have had due notice of said application to amend.

It is ordered, adjudged and decreed that said application to amend be and the same is hereby allowed.

W. I. GRUBB, *Judge.*

49 *Demurrers.*

Filed Sept. 7, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of the State of Alabama. In Equity.

IDA RICHARDSON HOOD and Others, Complainants,
v.
J. B. MCGEHEE and Others, Deendants.

Demurrer of the defendants in the above-entitled cause who have heretofore appeared in said cause and filed demurrers to the original bill and to the bill as heretofore amended to the said bill as last amended.

The said defendants by protestation, not admitting any of the matters alleged in the said bill of complaint as amended, demur thereto, and for grounds of demurrer allege and state the same grounds of demurrer as are alleged and stated in their demurrers to the original bill, and to the said bill as first amended.

TILLMAN, BRADLEY & MORROW,
Solicitors for said Defendants.

STATE OF ALABAMA,
Jefferson County, ss:

Personally came before the undersigned, a notary public in and for said County and State John P. Tillman, who having been by me first duly sworn, deposes and says that he is one of the solicitors of the defendants filing the foregoing demurrer, and also their
50 agent; that the said defendants are non-residents of the State of Alabama; and that the said demurrer is not filed for delay.

JNO. P. TILLMAN.

Sworn to and subscribed before me on this the 7th day of September, 1911, as witness my hand and seal of office.

T. B. MORTON,
Deputy Clerk.

I, Jno. P. Tillman, one of the solicitors of the defendants filing the foregoing demurrer, hereby certify that said demurrer is in my opinion well founded in point of law.

JNO. P. TILLMAN.

Final Decree.

Filed Sept. 25, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Southern Division, Northern District of Alabama.

In Equity.

IDA RICHARDSON HOOD et al., Complainants,
v.
J. B. MCGEHEE et al., Defendants.

This cause, coming on again to be heard, at this term of the Court, upon application of the complainants to further amend their bill of complaint, and upon consideration of the amendment
51 offered, a copy of which has been duly served upon the solicitors of the defendants who have appeared in the cause, and after arguments by solicitors for complainants and defendants who have heretofore appeared and filed demurrers to the original bill, and to the bill as first amended, which demurrers have been heretofore sustained, the objections made in open court by the said defendants to the allowance of the said amendment upon the ground that the same only presents immaterial and impertinent matters, being overruled, it is ordered by the Court that the said complainants have leave to so further amend their said bill of complaint, and the said amendment is this day filed.

Thereupon, the said defendants filed their demurrer to the said bill of complaint, as last amended, and the cause by consent of said parties, was then submitted for decree upon the said demurrer; and, upon consideration thereof, the Court is of the opinion that for the reasons stated in its written opinion filed in said cause upon the hearing upon the demurrer to the said bill of complaint, as first amended, fails to show that complainants have any estate or equity in the lands described in the bill of complaint, and that, therefore, the demurrer to the said bill of complaint, as last amended is well taken.

It is therefore ordered, adjudged and decreed by the Court that the said demurrer to the said bill of complaint as last amended, be and the same is hereby sustained.

And the said complainants declining to further amend their said bill of complaint, upon motion of the said defendants, it is further ordered, adjudged and decreed by the Court that the said bill of complaint, as the same has been amended, be, and the same is hereby forever dismissed out of this Court.

It is further ordered and decreed by the Court that the complainants pay the costs of this suit, to be taxed by the Clerk, for which execution may issue.

(Signed) W. I. GRUBB.

52 *Assignments of Error.*

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

In Equity.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. McGEHEE et al., Defendants.

Now comes Ida Richardson Hood and Odile Mussom Holland, complainants in the above entitled cause, who, on this day have prayed an appeal from the final decree rendered herein on the 25th day of September, 1911, to the Circuit Court of Appeals of the United States for the Fifth Circuit, and say that there is manifest error in the record for which this cause should be reversed, and as such error make the following:

Assignments of Error.

First. The said Circuit Court erred in sustaining the demurrer to complainants' bill and dismissing said bill. The bill showed complainants to be entitled to the lands therein mentioned by virtue of the contract set up as clearly shown therein and for sufficient and valuable consideration, and should have been decreed to be specifically enforced as prayed for in said bill. That the cause was seasonably brought and that this court had jurisdiction of the parties and of the subject-matter, and had lawful power to afford the relief prayed for.

53 Second. That the Court erred in not overruling said demurrer.

Wherefore, said Ida Richardson Hood and Odile Mussom Holland, complainants in the above entitled cause, pray that said decree of the Circuit Court rendered therein on the 25th day of September, 1911, sustaining the defendants' demurrer and dismissing complainants' bill, be reversed.

PERCY, BENNERS & BURR,
Solicitors for Complainants, Ida Richardson Hood and Odile Mussom Holland.

FRANCIS P. PACE,
H. C. S. STIMPSON,
SAMUEL PROSKAUER,
Of Counsel, 29 Broadway, New York City.

Presented this 21st day of December, 1911.
(Signed) W. I. GRUBB,
U. S. Dist. Judge.

Filed Dec. 21, 1911. Chas. J. Allison, Clerk.

54 *Bond on Appeal.*

Filed Dec. 21, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

In Equity.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. MCGEHEE et al., Defendants.

Know all men by these presents, that we, Ida Richardson Hood and Odile Mussom Holland, as principals, and National Surety Company, as surety, are held and firmly bound unto J. B. McGehee and all respondents in the above styled cause, in the fully and just sum of two hundred and fifty dollars, to be paid to said obligees, their administrators, executors and assigns, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

The condition of this bond is such that, whereas, in the above entitled cause, complainants therein, the said Ida Richardson Hood and Odile Mussom Holland, have prayed an appeal to the Circuit Court of Appeals of the United States for the Fifth Circuit from the decree rendered by said Circuit Court in said cause on, to wit: September 25th, 1911, sustaining defendants' demurrers to their bill and dismissing their bill,

Now, therefore, if the said Ida Richardson Hood and Odile Mussom Holland shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their appeal good, then the above obligation shall be void; otherwise of full force and effect.

55 Witness our hands and seals, this 21st day of December, 1911.

IDA RICHARDSON HOOD, [SEAL.]
ODILE MUSSOM HOLLAND,
By AUGUSTUS BENNERS, *Their Solicitors.*
NATIONAL SURETY COMPANY, [SEAL.]
By J. L. DILLON, *Resident Vice President.*

Attest:
E. H. JUDGE,
Resident Ass't Sec'y.

The foregoing bond is hereby approved both as to form and sufficiency of the surety, this the 21st day of December, 1911.

W. I. GRUBB, *Judge.*

56 *Petition on Appeal.*

Filed Dec. 21, 1911. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

In Equity.

IDA RICHARDSON HOOD et al., Complainants,
vs.
J. B. MCGEHEE et al., Defendants.

To the Honorable Judges of said Court:

Now come Ida Richardson Hood and Odile Mussom Molland, complainants in the above entitled cause, and conceiving themselves to be aggrieved by the final decree rendered in said cause on the 25th day of September, 1911, and do hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and pray that such appeal be allowed.

The grounds upon which this appeal is based are specified in the assignments of error, which are filed herewith. And petitioners pray that a transcript of the record and the proceedings in this cause be certified and sent to said United States Circuit Court of Appeals for the Fifth Circuit, and that said decree be by said Appellate Court reviewed and reversed.

IDA RICHARDSON HOOD,
ODILE MUSSOM HOLLAND,
By A. BENNERS, *Att'y.*
PERCY, BENNERS & BURR,
Solicitors for Complainants,
By A. BENNERS.

57 FRANCIS P. PACE,
H. C. S. STIMPSON,
SAMUEL PROSKAUER,
Or Counsel, 29 Broadway, New York City.

Assignments of error having been filed herewith, and security taken and approved as required by law, the foregoing appeal is allowed, this the 21st day of December, 1911.

W. I. GRUBB, *Judge.*

Order Extending Time.

Filed January 22, 1912. Chas. J. Allison, Clerk.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

In Equity.

IDA RICHARDSON HOOD et als.
vs.
J. B. MCGEHEE et als.

It having been made to appear to the Court that further time is necessary in which to complete the transcript of the record in this cause, and have same filed at New Orleans,

58 It is ordered that the Clerk of the United States District Court, for the Northern District of Alabama have until the 21st day of February, 1912, in which to complete said record and have same filed in the Clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, La.

This the 20th day of January, 1912.

DAVID D. SHELBY,
United States Circuit Judge.

THE UNITED STATES OF AMERICA,
Northern District of Alabama, ss:

I, Chas. J. Allison, Clerk of the District Court of the United States, for the Southern Division of the Northern District of Alabama, do hereby certify that the foregoing pages, numbered from one (1) to fifty-*two* (58) is a full, true and correct transcript of the record in the matter of Ida Richardson Hood, et als., vs. J. B. McGehee, et als., in equity, as fully as the same appears of record and on file in my office.

In testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Birmingham, on this the 8*st* day of February, A. D., 1912.

[Seal District Court United States, Nor. Dist. Ala.]

CHAS. J. ALLISON,
Clerk U. S. District Court, Northern District of Alabama.

59 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of October 23d, 1912.

No. 2331.

IDA RICHARDSON HOOD et al.
versus
J. B. MCGEHEE et al.

On this day this cause was regularly called, and, after argument by Augustus Benners, Esq., and Samuel Proskauer, Esq., for Appellants, and John P. Tillman, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed November 22nd, 1912.

60 United States Circuit Court of Appeals, Fifth Circuit.

No. 2331.

IDA RICHARDSON HOOD et al.
v.
J. B. MCGEHEE et al.

Appeal from the United States Circuit Court, Northern District of Alabama.

Before Pardee and Shelby, Circuit Judges, and Meek, District Judge.

By the COURT:

On the record we reach the same conclusion as the Judge of the lower court, and we are constrained to affirm the decree appealed from.

It is so ordered.

Judgment.

Extract from the Minutes of November 22, 1912.

No. 2331.

61 IDA RICHARDSON HOOD et al.
versus
J. B. MCGEHEE et al.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Ida Richardson Hood, and Odile Mussom Holland, and the surety on the appeal bond herein, National Surety Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the District Court of
62 the United States for the Northern District of Alabama.

Petition for Appeal and Order.

Filed Oct. 7, 1913.

Petition and Order of Appeal.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2331.

In Equity.

IDA RICHARDSON HOOD et al., Appellants,
vs.
J. B. MCGHEE et als., Appellees.

The above mentioned appellants, Ida Richardson Hood, and Odille Mussom Holland, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, and that a judgment has therein been rendered on the 22nd day of November, 1912, affirming the decree of the Circuit Court of the United States, for the Northern
63 District of Alabama, Southern Division, and that the matter in controversy in said suit exceeds One Thousand Dollars, ($1,000) besides costs; that this case is one in which the United States Circuit Court of Appeals for the Fifth Circuit has no final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause, directing the clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in said cause with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants, may be reviewed and if error be found, corrected according to the laws and customs of the United States.

PACE & STIMPSON,
JOHN WATT,
64 (Signed) E. HOWARD McCALEB,
Attorneys for Appellants.

An assignment of errors having been duly presented with the foregoing petition, It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

(Signed) DAVID D. SHELBY,
Judge United States Circuit C. of A.,
Fifth Circuit.

Assignment of Errors.

Filed Oct. 7, 1913.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2331.

IDA RICHARDSON HOOD et al., Appellants,
vs.
65 J. B. McGEHEE, et als., Appellees.

In Equity.

The appellants, Ida Richardson Hood and Odile Mussom Holland, being about to ask for the allowance of an appeal from the judgment and decree of the Circuit Court of Appeals of the United States for the Fifth Circuit heretofore entered in the above styled cause affirming the final decree in said cause of the Circuit Court of the United States for the Northern District of Alabama, Southern Division, do hereby make the following assignments of errors in the said judgments and decrees, to-wit:—

1. The Circuit Court of Appeals of the United States for the Fifth Circuit erred in affirming the final decree of the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

66 2. The Circuit Court of Appeals of the United States for the Fifth Circuit erred in holding that under the full faith and credit clause of the Constitution of the United States, the appellants were not entitled to have enforced, as binding upon the courts of Alabama, proceedings had in the Honorable District Court for the Parish of Orleans, State of Louisiana, under and by virtue of which appellants were adopted by George T. McGehee and Elizabeth B. McGehee as their children and heirs.

3. The Circuit Court of Appeals erred in holding that appellants were not entitled by virtue of the contract of adoption entered into between said George T. McGehee and Elizabeth B. McGehee, his wife, on the one hand, and appellants, therein represented by their tutrix, Elenora R. Hennen, on the other, to a specific performance of the provisions of said contract of adoption, by virtue of which appellants were invested with all the rights and benefits of

67 legitimate children in the estate of said George T. McGehee and Elizabeth B. McGehee in the same manner and to the

same extent as if appellants had been the daughters of said George T. McGehee and Elizabeth B. McGehee, by which specific performance all right, title and interest in and to the lands in controversy would be divested out of appellees and vested in appellants.

4. The Circuit Court of Appeals erred in adopting the holdings of the Circuit Court of the United States for the Northern District of Alabama, Southern Division, as set forth in the opinion of said Circuit Court.

Wherefore the appellants pray that the decree of said Circuit Court of Appeals for the Fifth Circuit, and the final decree of said Circuit Court of the United States for the Northern District of Alabama, Southern Division, entered in said cause, be reversed.

68 (Signed) PACE & STIMPSON,
JOHN WATT AND
E. HOWARD McCALEB,
Attorneys for the Appellants, Ida Richardson Hood and Odile Mussom Holland.

Bond on Appeal.

Filed Oct. 7, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2331.

IDA RICHARDSON HOOD et als., Appellants,
vs.
J. B. MCGEHEE et als., Appellees.

Know all men by these presents, that we, Ida Richardson Hood and Odile Mussom Hood Holland of the City of New York, New York State, and National Surety Company, of the county of
69 —— State of New York, are held and firmly bound unto J. B. McGehee, Caroline McGehee, Scott McGehee, Mason Snowden, Kate Burris Ginder, Kate Burruss Semple, Mary Burruss Semple, John Hanson Kennard, Laura McGehee Davis, Edward John Percy, Eugenie Corrine Percy, Harry Trimble McGehee, Arthur Herwin McGehee, Mary Cornelia McGehee, Edwin E. McGehee, Arthur Harry McGehee, John Nathaniel McGehee, Annie B. McGehee, Robert B. Semple, John Burruss Semple, Thomas C. Kennard, Dr. Edward L. McGehee, Stella McGehee, Charles G. McGehee and Mrs. Wilson Williams, in the sum of five hundred ($500.00) dollars, to be paid to the said J. B. McGehee, Caroline McGehee, Scott McGehee, Mason Snowden, Kate Burruss Ginder, Kate Burruss Semple, Mary Burruss Semple, John Hanson Kennard, Laura McGehee Davis, Edward John Percy, Eugenie Corrine Percy, Harry Trimble McGehee, Arthur Herwin McGehee, Mary Cornelia McGehee, Edwin E. McGehee, Arthur Harry McGehee, John Nathaniel McGehee,
70 Annie B. McGehee, Robert B. Semple, John Burruss Semple, Thomas C. Kennard, Dr. Edward L. McGehee, Stella Mc-

Gehee, Charles G. McGehee and Mrs. Wilson Williams; we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 2nd day of October, 1913.

Whereas the appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit, on the 22nd day of November, 1912.

Now, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

71 (Signed) IDA RICHARDSON HOOD AND
ODILE MUSSON HOOD HOLLAND,
By JOHN WATT, *Att'y.*
NATIONAL SURETY COMPANY,
By WM. A. TOURTAVEL,
[SEAL.] *Res. Vice-President.*
S. ROYDEN FANNING,
Res. Ass't Secretary.

The foregoing bond is approved this 6th day of Oct. A. D. 1913.
(Signed) DAVID D. SHELBY,
Judge U. S. C. C. A.

72 *Clerk's Certificate.*

United States Circuit Court of Appeals, Fifth Circuit.

UNITED STATES OF AMERICA:

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 59 to 71 next preceding this certificate contain full, true and complete copies of all the proceedings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2331, wherein Ida Richardson Hood, et al., are appellants, and J. B. McGehee, et als., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 58 are identical with the printed record upon which
73 said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of October, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk U. S. Circuit Court of Appeals for the Fifth Circuit,
By GEORGE W. ROBERTSON,
Deputy Clerk.

74 No. 2331.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA,
——, *Fifth Circuit:*

To J. B. McGehee, Caroline McGehee, Scott McGehee, Mason Snowden, Kate Burruss Ginder, Kate Burruss Semple, Mary Burruss Semple, John Hanson Kennard, Laura McGehee Davis, Edward John Percy, Eugenie Corrine Percy, Harry Trimble McGehee, Arthur Herwin McGehee, Mary Cornelia McGehee, Edwin E. McGehee, Arthur Harry McGehee, John Nathaniel McGehee, Annie B. McGehee, Robert B. Semple, John Burruss Semple, Thomas C. Kennard, Dr. Edward L. McGehee, Stella McGehee, Charles G. McGehee, and Mrs. Wilson Williams:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington in the District of Columbia, thirty days after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals, for the Fifth Circuit, wherein Ida Richardson Hood and Odille Mussom Holland are appellants and you are appellees, to show cause, if any there by, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable David D. Shelby, Judge of the United States Circuit Court of Appeals, for the Fifth Circuit, this 6th day of October, 1913.

DAVID D. SHELBY,
Judge U. S. Circuit Court of Appeals, Fifth Circuit.

75 [Endorsed:] No. 2331. United States Circuit Court of Appeals, 5th Circuit. Ida Richardson Hood et al., Appellants, vs. J. B. McGehee et als., Appellees. Citation of appeal. U. S. Circuit Court of Appeals. Filed Oct. 7, 1913. Frank H. Mortimer, Clerk.

76 In the United States Circuit Court of Appeals for the Fifth Circuit.

In Equity.

No. 2331.

IDA RICHARDSON HOOD et al., Appellants,
vs.
J. B. MCGEHEE et als., Appellees.

Waiver of Citation of Appeal.

An appeal having been taken by the appellants to the Supreme Court of the United States in the above entitled and numbered cause, returnable within thirty days from the 6th day of October, 1913, the undersigned solicitors and counsel for Appellees hereby waives citation of appeal and service of citation of appeal.

TILLMAN, BRADLEY & MORROW.
JNO. P. TILLMAN.

77 [Endorsed:] No. 2331. United States Circuit Court of Appeals for the Fifth Circuit. Ida Richardson Hood et al., Appellants, vs. J. B. McGehee, et als., Appellees. Waiver of citation of appeal and service. U. S. Circuit Court of Appeals. Filed Oct. 10, 1913. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 23,909. U. S. Circuit Court Appeals, 5th Circuit. Term No. 281. Ida Richardson Hood and Odile Mussom Hood Holland, appellants, vs. J. B. McGehee et al. Filed October 16th, 1913. File No. 23,909.

SUBJECT INDEX.

		Page
1.	Statement of the case	1, 5
2.	Assignment of Error	5, 6
3.	Argument on Assignment of Error No. 2	7
4.	Argument on Assignment of Error 1, 3 and 4	8
5.	In the absence of any settled decision construing State Statutes by the highest State Court Federal Courts exercise an independent judgment as to what is the law of the State applicable to the case, even where a different view has been expressed by the State Court after the rights of the parties accrued	7
6.	The status of an adopted child fixed as such by a State Court having jurisdiction, is compelled by the full faith and credit clause of the Constitution and rights of inheritance accorded in another State, when the latter State has, by Statute recognized such rights of inheritance to adopted children, and where before such adoption, the heritable rights of such child has accrued, there was no settled decision of the highest State Court construing its adoption statute adversely. (Wharton Confl. Laws, Sec. 25a; Ross v. Ross, 129 Mass., 243.)	7
7.	Executory agreements and mutual promises will be specifically enforced in equity	8, 9
8.	In order to effectuate the intention of the parties to a contract, the state of things, the relation of the parties, their connection with the subject matter, and the surrounding circumstances, should govern, and such inter-	

Page

pretation accorded strongly against the grantor 9

9. Statutory implications are operative only when the deed or instrument fails to contain statutory covenants.....10, 11, 12

10. Equity will not limit the meaning and intention of the contracting parties to the statutory implication..... .....11, 12

11. In deeds, the words are to be strongly against the party using them, while in respect to statutes in derogation of the common law, they should be construed strictly..... 11

12. The word "estate" as used in the contract under consideration is one of large signification and means all the property which the grantor would have at his death.....12, 13

13. Ineffective adoption proceedings and contract accompanied by a promise of the adopting parent to leave his estate to the adopted child will amount to a contract when fully performed by the child and specifically enforced in equity against the collateral heirs of the adopting parent or his legal representative 13, 18

14. Practical construction of instruments by the parties to them should, in case of doubt as to the meaning of the words used, control the intention of the parties and the meaning of their language..... .....18, 19

ALPHABETICAL INDEX.

	Page
Abney v. Deloach, 84 Ala., 393	7
Brown v. Finlay, 157 Ala., 424	7
Bradley v. Washington Packet Co., 13 Pet., 89	9
Brown v. Slater, 116 Conn., 192	10
Bolman v. Bolman, 80 Ala., 451	15
Bush v. Whitaker, 91 Supp., 616, 45 Wis., 74	16
Brown v. Sutton, 129 U. S., 239	16, 18
Burns v. Smith, 21 Montana, 251	18
Canal Co. v. Hill, 82 U. S., 94	10
Cross v. Scruggs, 115 Ala., 264	10
Cranons v. Eagle Cotton Mills, 120 Ind., 9	10
Chicago v. Sheldon, 76 U. S., 50	19
Douglas v. Lewis, 131 U. S., 75	11
Fusileer v. Masse, 4 La., 424	15
Field v. Lighter, 118 Ill., 30	10
Godine v. Kidd, 19 N. Y. Supp., 335	15
Gall v. Gall, 19 N. Y. Supp., 332	15
Homer v. Shonfield, 84 Ala., 315	10
Hunter v. McGraw, 32 Ala., 519	10
Healy v. Simpson, 66 N. Y. Supp., 927; afd. 167 N. Y., 572	15
Healy v. Simpson, 113 Missouri, 340	17
Jaffe v. Jacobson, 48 Fed. Rep., 21, 24	17
Kuhn v. Fairmont Coal Co., 215 U. S., 349	7
Kenyon v. Ulan, 6 N. Y. Supp., 784; 53 Hun., 592	16
Leatherwood v. Sullivan, 81 Ala., 858	9
Livingston v. Arrington, 28 Ala., 424	10
Moran v. Prather, 13 Wall., 501	9
Merrian v. U. S., 107 U. S., 441	9
Moran v. Bradley, 9 Wall., 407	10
Matthews v. Mathews, 16 N. Y. Supp., 621; 62 Hun., 61	16
Parcell v. Striker, 41 N. Y., 480	16
Parsons on Contracts, Vol. 3, Secs. 405 and 406	16

ALPHABETICAL INDEX—Continued.

	Page
Ross v. Ross, 129 Mass., 243	7
Rock Island R. R. v. Rio Grande R. R., 143 U. S., 609	10
Sullivan v. Rabb 86 Ala., 433	9
Sanders v. Clark, 29 Cal., 300	10
Strong v. Gregory, 19 Ala., 149	10
Sea v. McCormick 68 Ala., 549	10
Sharkey v. McDermott, 91 Mo., 647	13, 15
Shehak v. Battles, 110 N. W. Rep. (Iowa), 330, 8 L. R. A., (N. S.) 1130	14
Schouler on Wills, Secs. 452, 454	16
Thomas v. Blair, 111 La. Rep., 678, 682	12
Tierman v. Craine, 121 Pacific Rep., 1007	14
Taylor v. Kelly, 31 Ala., 59	16
Teets v. Flaners, 118 Missouri, 660	17
Topliff v. Topliff, 122 U. S., 121	19
U. S. v. Peck, 102 U. S., 65	9
U. S. v. Gibbon, 109 U. S., 200	10
Van Tine v. Van Tine, 15 Atl. Rep., 249	18
Van Dyne v. Vreeland, 11 N. J. Eq., 370	18
Wharton's Conflict of Laws, Sec. 251 a	7
Winne v. Winne, 166 N. Y., 263	15
Wright v. Wright, 99 Mich, 170	15
Waterman on Specific Performance, Sec. 41	16

Supreme Court of the United States

October Term, 1914.

No. 281.

IDA RICHARDSON HOOD AND ODILE MUSSOM HOOD HOLLAND,

Appellants,

versus

J. B. McGEHEE, ET AL.

Appeal From the United States Circuit Court of Appeals for the Fifth Circuit.

Brief for Appellants.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the United States Circuit Court of Appeals, Fifth Circuit, affirming

the conclusions and decree of the United States Circuit (District) Court for the Northern District of Alabama (Rec., pp. 38, 39), sustaining a general demurrer. The bill and amendments thereof and exhibits thereto (Rec., pp. 2 to 5; 6 to 10; 13 to 14; 16 to 20; 21, 22, 30, 31) substantially set forth that appellants, citizens and residents of New York State, are daughters of the late General John B. Hood, who died in 1877; that subsequent to their father's death, George T. McGehee, his warm, close and esteemed friend, and Elizabeth B. McGehee, his wife, adopted appellants under regular proceedings of adoption in Louisiana, according to its laws, where appellants, who were minors, had their domicile, which adoption was finally consummated by a notarial act (Rec., pp. 2, 3 and Exhibits, Rec. pp. 6 to 10). At the time of the adoption, McGehee resided in Mississippi, and then and thereafter owned no real estate in Louisiana. (Rec., p. 21.) After their adoption, and through years of association that followed, appellants were reared, educated, carefully guarded from all harm, beloved and cherished by their said adopting parents, George T. McGehee and his wife, "as if they were their own children," according to the words, tenor and effect of the act of adoption. Elizabeth B. McGehee, the adopting mother, died in 1893, and George T. McGehee, the adopting father, on February 5, 1906). (Rec., p. 3.) At his death, George T. McGehee, the adopting parent, was possessed of the land in controversy fully described in Exhibit "D" (Rec., p. 11), "situated in Jefferson County, Alabama, and purchased by him in 1886 (Rec., p. 11) twelve years after the adoption and about nineteen years before his

death." The full faith and credit clause of the Federal Constitution and the laws of Congress passed in pursuance thereof is set up in support of the Louisiana adoption proceedings, duly authenticated and made part of the bill (Rec., pp. 3 and 4); and it is further alleged that in the notarial act McGehee and wife covenanted with appellants, through their legal representative, to "invest them with all the rights and benefits of legitimate children in their estate," founded on sufficient consideration, that they performed their part of the contract, and that the same should be specifically enforced against defendants, McGehee's estate and the defendant claimants of the property, who, as the collateral relations and next of kin of McGehee, would inherit his estate, this latter averment being made without prejudice to the contentions set up by appellants and contained in the bill of complaint. (Rec., p. 14.) The prayer is one for relief to remove a cloud and to quiet title. It is directed (Rec., pp. 4 and 5) against the defendants, of whom some are alleged to be citizens of Louisiana, one a citizen of New York, another a citizen of Texas, and the remaining ones, whose residences are unknown. (Rec., p. 2.)

Amendments to the bill contain the averments, that on or about February 24, 1899 (about twelve years after his acquisition of the Alabama property now in controversy), McGehee wrote a letter to the appellants which was probated as his will in the Chancery Court of Wilkinson County, Mississippi, where he resided at the time of his death (Rec., p. 21); this will and the probate proceedings being made part of the bill and copied on pages

16 to 21 of the transcript. The next amendment reiterates in detail that from the adoption and at all times up to the respective deaths of the McGehees, their adopted parents, appellants performed the obligations of children under the contract and rendered valuable services to them, and in 1894, in order to relieve McGehee of his then serious financial embarrassment, they turned over to him the sum of $8,600, their share of the "Hood Relief Fund," and which sum has never been repaid. (Rec., pp. 30, 31.) The notarial act or contract (Exhibit "A," Rec., pp. 6 and 7) contains McGehee's obligations

> "to support, maintain and educate them (appellants) as if they were their own children; and hereby invest them with all the rights and benefits of legitimate children in their estate, in the same manner and to the same extent as if the said minors, Odile Mussom Hood and Ida Richardson Hood, had been the daughters of said Geo. T. McGehee and Elizabeth T. McGehee." (Rec., p. 7.)

In McGehee's letter to appellants and which was duly probated as his will in Wilkinson County, Mississippi, dated February 24, 1899, many years after his acquisition of the Alabama property in controversy, he writes:

> "I have burnt up my will because you are my natural or rather legal heirs under the Act of Adoption & will inherit all that I die possessed after my debts are paid. Library and all except my gold watch which I want to go to Schaniber McGehee & my and Lilly's letter and trinkets in my armoir which go to Kate Ginder. Everything else of mine is to be yours equally divided.

> "This looks like a last will and testament—will be valid as such. So take—of it for I don't expect to make any regular will. But don't let this make you sad, it is only a wise precaution which a man of 66 years ought to take to save his heirs trouble. I may live to bury one or both of you (which God forbid) but 'tis best to look ahead." (Rec., p. 18.)

Demurrers filed set up the ineffectiveness of the Louisiana adoption proceedings to control the devolution of lands in Alabama, that the contract investing appellants with all the rights in McGehee's estate was not such as could be specifically enforced in equity, that McGehee's will could pass no title because invalid in form for want of attesting witnesses and ineffective as a will for want of an Alabama probate, and generally because the bill disclosed no equity. (Rec., pp. 14, 15, 22, 23.) These demurrers to the bill as amended were sustained and the suit dismissed. (See an opinion, Rec., pp. 24 to 30, and decree, Rec., p. 33.) On petition bond and assignment of errors the case was appealed to the United States Circuit Court of Appeals, Fifth Circuit (Rec., pp. 34 to 36), and after hearing, that Court reached the same conclusions as the District Judge and affirmed the decree (Rec., p. 38); whereupon an appeal was taken to this Court. (Rec., pp. 39, 40.)

ASSIGNMENT OF ERRORS.

1. The Circuit Court of Appeals of the United States for the Fifth Circuit erred in affirming the final decree

of the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

2. The Circuit Court of Appeals of the United States for the Fifth Circuit erred in holding that under the full faith and credit clause of the Constitution of the United States, the appellants were not entitled to have enforced, as binding upon the Courts of Alabama, proceedings had in the Honorable District Court for the Parish of Orleans, State of Louisiana, under and by virtue of which appellants were adopted by George T. McGehee and Elizabeth B. McGehee as their children and heirs.

3. The Circuit Court of Appeals erred in holding that appellants were not entitled by virtue of the contract of adoption entered into between said George T. McGehee and Elizabeth B. McGehee, his wife, on the one hand, and appellants, therein represented by their tutrix, Elenora R. Hennen on the other, to a specific performance of the provisions of said contract of adoption, by virtue of which appellants were invested with all the rights and benefits of legitimate children in the estate of said George T. McGehee and Elizabeth B. McGehee in the same manner and to the same extent as if appellants had been the daughters of said George T. McGehee and Elizabeth B. McGehee, by which specific performance all right, title and interest in and to the lands in controversy would be divested out of appellees and vested in appellants.

4. The Circuit Court of Appeals erred in adopting the holdings of the Circuit Court of the United States for the Northern District of Alabama, Southern Division, as set forth in the opinion of said Circuit Court.

ARGUMENT.

Assignment of Error No. 2.

Brown v. Finlay, 157 Ala., 424, upon which the District Court and the Circuit Court of Appeals rested their denial of the faith to be given the notarial act or contract of adoption and other proceedings had in Louisiana, was decided after the death of McGehee and after the rights of appellants had accrued.

These adoption proceedings were substantially in accordance with Section 2367 of the Alabama Code and were duly recorded in the Probate Court of Jefferson County, Alabama, where the property was situated. (Rec., p. 8; **Abney v. Deloach, 84 Ala., 393.)** Prior to **Brown v. Finlay, 157 Ala., 424,** there was no law or settled decision of the highest Alabama Court, declarative as a rule of property, denying the right of inheritance to an adopted child in the estate of the adopting parent, under proceedings had in a State other than Alabama, and as it is conceded by the opinion and judgment in this case that **Brown v. Finlay** "is contrary to the current of authority" (Rec., p. 25; **Wharton's Conflict of Laws, Sec. 251 a.; Ross v. Ross, 129 Mass., 243),** we invoke the rule announced in **Kuhn v. Fairmont Coal Co., 215 U. S., 349,** and kindred decisions, to the end, that it is the right and duty of this Court to exercise its independent judgment

> "as to what is the law of the State applicable to the case, even where a different view has been expressed by the State Court after the rights of parties accrued."

Assignment of Error Nos. 1, 3, 4.

The contract of adoption and other proceedings clearly express McGehee's intention of not only obligating himself to support, maintain and educate the appellants, but also to invest them with all the rights and benefits of legitimate children in his estate. In short, the agreement was not solely one of adoption, but was one to leave the appellants his estate—that is to say, all his property on his death. True, at the time of the adoption, McGehee owned no property in Alabama, but the use of the word "estate" contemplated a fixed intention of giving the contract effect as to both present and future property which he may leave at his death. This intention is confirmed by McGehee's own interpretation expressed by him in his will made in 1899 (Rec., p. 17), about 12 years after his acquisition of the Alabama property in controversy (Rec., pp. 11 and 12), wherein he says:

> "I have burnt up my will because you are my natural or rather legal heirs under the Act of Adoption and will inherit all that I die possessed of after my debts are paid. Library and all except my gold watch which I want to go to Schaniber McGehee and my Lilly's letter and trinkets in my armoir which go to Kate Ginder. **Everything else of mine is to be yours equally divided.** This looks like a last will and testament—will be valid as such. So take— of it for I don't expect to make a regular will."

Whilst under the Alabama jurisprudence the want of subscribing witnesses to a will probated in Mississippi

cannot be collaterally attacked for defects of form (**Leatherwood v. Sullivan, 81 Ala., 858; Sullivan v. Rabb, 86 Ala., 433**), and whilst under a fair construction of Secs. 6172 and 6191 of the Alabama Code of 1907, a foreign will should come under the exception stated in Sec. 6172, and, therefore, the form of such a will should be governed by the law of Mississippi, and whilst it does not appear that McGehee's will was probated in Alabama, it was error for the lower Courts to have dismissed the bill entirely instead of without prejudice, yet even if considered ineffective as a will, and in view of the adoption contract and proceedings, in view of the payment and transfer of $8,600 by appellants to McGehee, in view of valuable services rendered by them and other considerations not susceptible of a money valuation (Rec., pp. 30, 31) and in view of McGehee's own interpretation of the contract, and of his expressed intentions, we submit that equity will specifically enforce the entire transactions and reciprocal obligations of the parties, by giving to them the credit which the parties intended they should have.

It will hardly be denied that these were executory agreements and mutual promises which equity will specifically enforce. The state of things, the relation of the parties, their connection with the subject-matter and the circumstances attending these transactions should govern in order to effectuate the intention, for the Judge is not at liberty to narrow the meaning of language and thus defeat the intention. **Moran v. Prather, 23 Wall., p. 501; Merriam v. U. S., 107 U. S., 441; U. S. v. Peck, 102 U. S., 65; Bradley v. Washington Packet Co., 13 Pet., 89;**

U. S. v. Gibbon, 109 U. S., 200; Rock Island R. R. v. Rio Grande R. R., 143 U. S., 609; Canal Co. v. Hill, 82 U. S., 94; Cross v. Scruggs, 115 Ala., 264; Sanders v. Clark, 29 Cal., 300; Brown v. Slater, 116 Conn., 192; Cranons v. Eagle Cotton Mills, 120 Ind., 9; Strong v. Gregory, 19 Ala., 149; Field v. Lighter, 118 Ill., 30; Moran v. Bradley, 9 Wall., 407. Such interpretation is also most strongly against the grantor, **ut res majis valeat quam pereat. Homer v. Shonfield, 84 Ala., 315; Hunter v. McGraw, 32 Ala., 519; Sea v. McCormick, 68 Ala., 549; Livingston v. Arrington, 28 Ala., 424.**

Disregard of these rules constituted the fundamental error of the opinion and judgment appealed from where reference to all else, save the notarial contract, is carefully excluded. The opinion is pitched on the sole ground that the covenant contained in the notarial act "and hereby invest them with all the rights and benefits of legitimate children in their (his) estate, etc." was surplusage and only what the Louisiana law would have implied, and it is argued that:

> "The language of the notarial act, with reference to the rights of inheritance conferred by it on the plaintiffs, is substantially that of the Louisiana statute. Its use in the notarial act, has, therefore, no significance other than to express what the law would imply. If it had been omitted, the legal meaning of the notarial act would have been unchanged. The adoption proceedings clearly show that the parties were proceeding under the Louisiana act and with no purpose to confer rights on the adopted children other than those conferred by adoption under that law.

> "If then any such contract exists, it must be one that is implied from the proceedings of adoption, as distinguished from any peculiar language in which they are couched." (Rec., p. 27.)

This conclusion is opposed to **Douglas v. Lewis, 131 U. S., 75,** where the rule is reaffirmed that statutory implications are operative **only** when the deed or instrument fails to contain the statutory covenants. And the Chief Justice said:

> "In that view the grantor is protected by the general covenant of warranty substantially to the same extent as by the statutory covenant, and the conclusion is strengthened that **where one is expressly inserted in the deed the other ought not to be implied.**"

It, therefore, follows that because the statute would have implied what the parties had expressed, their meaning or intention cannot be restricted to the statutory implication, and this because of the principle

> "in respect to deeds the words are to be taken most strongly against the party using them, while in respect to statutes, if in derogation of the common law, as that under consideration is, they should be construed strictly."
>
> **Douglas v. Lewis, 131 U. S., 75.**

The same error as to restricting the meaning and intention of both parties to the statutory implication and upon which the opinion of the Circuit Court in opposition to the jurisprudence of this Court is founded, is dis-

closed and stated in another form by the learned Judge on page 28 of the transcript, where it is said:

> "If there had been an agreement to leave plaintiffs a share in the adopting parent's estate on his death, separate from and independent of the adoption, and the means selected by the parties to accomplish the agreement had failed to do so, equity might enforce the agreement by supplying a method in lieu of the ineffective one, selected by the parties."

Therein is exposed the slender thread on which the whole opinion hangs, for if it is equity that the intention of contracting parties is to be governed, limited or expanded, according to the number of writings, then every contract having a manifold purpose but embodied in one document would serve as a mere scrap of paper.

It is next argued that because at the time of making this contract, McGehee owned no property either in Louisiana or in Alabama, he had no fixed intention to include after acquired property. The covenant "and hereby invest them with all the rights and benefits of legitimate children in their estate in the same manner and to the same extent as if the said minors, Odile Mussom Hood and Ida Richardson Hood had been the daughters of said George T. McGehee and Elizabeth B. McGehee," manifestly contains a continuing promise. The word "estate" is one of large signification and taken in connection with the other language employed, clearly means all the property which one would have at his death. In Louisiana (where the contract was made) it is synonymous with succession **(Thomas v. Blair, 111 La.**

Rep., 678, 682), and contemplates future as well as present property wherever situated, which a person leaves at his decease. For in ascertaining and effectuating the purpose and intention—that is to say, the meaning of the word used—we should look to the law of the place where the contract was made, and further as said in **Sharkey v. McDermott, 91 Mo., 647:**

> "The agreement was not solely one to adopt the plaintiffs, but was in part to leave the plaintiffs the property on their death."

Authorities need not be cited in support of this principle, particularly in view of the language used by the covenanter. This brings us to the proposition that an adoption proceeding and contract, whether valid or not, and even, as in this case, where they are ineffective in themselves, when accompanied by a promise to leave the estate of the adopting parent to the adopted child upon the death of such parent, will amount to a contract when, as is admitted by the bill and demurrer, fully performed by the children, be specifically enforced against the collateral heirs of the adopting parent. If the adoption contract and proceedings are invalid and ineffective in Alabama, then they give the appellants the right to insist upon a strict compliance with the express intention and continuing promise of McGehee, for under such a situation the adoption proceedings in Louisiana, even though regular, would, so far as Alabama is concerned, be an invalid adoption and in effect the same as if an invalid adoption had been made in Alabama, under a contract to adopt and leave the children his estate, and

though the adoption would then fail in Alabama, yet the contract as to the estate or property would be enforceable in a Federal Court of Equity.

The cases are numerous; they have been collated and discussed in **Tierman v. Craine, 121 Pacific Rep., 1007,** and in **Shehak v. Battles, 110 N. W. Rep. (Iowa), 330, 8 L. R. A. (N. S.) 1130 (head note):**

> "**2.** Surrendering a child to a stranger is a sufficient consideration for his undertaking to adopt it and give it rights of inheritance.
>
> "**3.** Equity will specifically enforce a contract by a stranger to give a child rights of inheritance in consideration of the surrender of it to him.
>
> "**4.** The Court, in enforcing his promise against the estate of one who undertakes, in consideration of the surrender to him of a child, that it shall share in his estate, does not establish the status of the child as an adopted heir or interfere with the status of adoption."

Ladd, J., in delivering the opinion of the Court, said on page 1136 of **Vol. 8, L. R. A. (N. S.):**

> "So, an agreement of adoption may fall short of meeting the statutory requirements and will be a valid and enforceable contract. The agreement in the case at bar stipulated that the plaintiff should 'acquire all the rights of inheritance by law.' This was equivalent to saying she should share in their estate as though their own child, but not as such. It does not purport to declare that her status should be such as to entitle her to inherit, but merely that, as a consideration on the part of Battles and his wife, she shall acquire a

portion of their property to be determined definitely at their death. It is a principle in equity that that is certain which can be made certain; and this happened upon the death of Mrs. Battles."

In **Winne v. Winne, 166 N. Y., 263,** it was said:

"In further consideration of this question, it must be assumed that this was an agreement upon the part of the intestate to take the custody and control of the plaintiff, to keep, maintain and educate him as her own child and at her death give him all her property. This agreement is clear, definite, certain, and was plainly understood, and the remedy sought is not for any reason unfair or inequitable. Under these circumstances, we are unable to discover any principle upon which it can be properly held that this contract was not binding in equity and was not enforceable against her estate."

To the same effect:

Godine v. Kidd, 19 N. Y. Supp., 335.
Healy v. Simpson, 66 N. Y. Supp., 927; afd. 167 N. Y., 572.
Wright v. Wright, 99 Mich., 170.
Fusileer v. Massey, 4 La., 424.
Gall v. Gall, 19 N. Y. Supp., 332.
Sharkey v. McDermott, 91 Mo., 647.

In **Bolman v. Bolman, 80 Ala., 451,** it was held:

"All the authorities agree that one may, for a valuable consideration, renounce the absolute power to dispose of his estate at pleasure and bind himself by contract to dispose of his property by will to a particular person, and that such

contract may be enforced in the Court after his decease, either by an action for its breach against the personal representative, or, in a proper case, by a bill in the nature of specific performance against his heirs, devisees or personal representatives. The validity of such agreements, as remarked by Mr. Freeman in a recent note on this subject, to the case of **Johnson v. Hubbell, 10 N. J. Eq. Rep., 332,** * * * is supported by unbroken current of authorities both English and American."

To the same effect see:

Taylor v. Kelly, 31 Ala., 59;
Kenyon v. Ulan, 6 N. Y. Supp., 784; 53 Hun, 592;
Mathews v. Mathews, 16 N. Y. Supp., 621; 62 Hun, 61;
Bush v. Whitaker, 91 Supp., 616; 45 Misc., 74;
Parcell v. Striker, 41 N. Y., 480;
Brown v. Sutton, 129 U. S., 239;
Parsons on Contracts, Vol. 3, Secs. 405 and 406;
Schouler on Wills, Secs. 452, 454;

which principle has been well stated by Waterman that:

"A person may make a valid agreement binding himself to dispose of his property in a particular way by last will and testament, and a Court of Equity will enforce such an agreement by compelling the heirs to convey the property in accordance with the terms of the contract."

Waterman on Spec., Perf., Sec. 41.

Again, in **Jaffe v. Jacobson, 48 Fed. Rep., 21, 24:**

> "We concede the law to be that a Court of Equity will specifically enforce a promise to leave another the whole or a definite portion of one's estate as a reward for peculiar personal services rendered, or other acts done by the promisee, which are not susceptible of money valuation, and were not intended to be paid for in money, provided the consideration has been substantially received at the promisee's death; and it is no objection to the enforcement of such contract that it was entered into with a third party for the promisee's benefit if the latter had acted under and executed it. Such seems to be the substance of the rule fairly deducible from the authorities cited and relied upon by the appellant's counsel."

In the case of **Healy v. Simpson, 113 Missouri, 340,** the Court said:

> "While a writing may not operate as a deed of adoption, lacking the legal requirements, still it may operate as a contract for adoption which on proper showing may be specifically enforced. * * * The instrument of writing in question cannot operate as an adoption, as it did not come up to legal requirements, but it can operate as a contract for adoption, which may, upon a proper showing, be specifically enforced in equity."

The same Court, in **Teets v. Flanders, 118 Missouri, 660,** held:

> "There can be no question that a Court of equity will decree specific performance of a valid agreement by a testator or intestate to give a part

> or all of his or her property to one rendering the attention and services of a child or otherwise, when those services had been fully and faithfully performed by that one."

To the same effect see:

Burns v. Smith, 21 Montana, 251.

In **Van Tine v. Van Tine, 15 Atl. Rep., 249,** a father gave his child to a sister with the mutual understanding that she was to provide for the child, bring her up and leave her property to her. **Held:** That a verbal agreement was binding upon her heirs.

To the same effect see:

Van Dyne v. Vreeland, 11 N. J. Eq., 370.

In **Brown v. Sutton, 129 U. S., 239,** this Court enforced a verbal contract to convey where the promisee had performed all and the promissor a part, which took it out of the Statute of Frauds.

Practical construction of instruments by the parties to them would mean nothing if no effect is to be given McGehee's will. Surely when he writes "I have burnt my will because you are my natural or rather legal heirs under the act of adoption and will inherit all that I die possessed of after my debts are paid," etc., indicates reference to this adoption contract "to invest them with all the rights and benefits of legitimate children in their (his) estate," etc. Bear in mind that, as alleged in the bill, when McGehee entered into the contract, he owned no property in Louisiana, thus indicating a purpose and intention to invest them with his estate whenever ac-

quired and wherever situated, at his death, for he writes "all that I die possessed of after my debts are paid;" besides, at the time he wrote his will, he owned the Alabama property. It is, therefore, clear that he used the word "estate" in its ordinary meaning as confirmed by his subsequent use of the word "all that I die possessed of." Moreover, after disposing of a few trinkets, he adds: "Everything else of mine is to be yours equally divided." So, McGehee's own construction of language used by him in a contract should control (see **Topliff v. Topliff, 122 U. S., quoting from Chicago v. Sheldon, 76 U. S., 50**), and particularly when that construction is consonant with the intention of both parties, with law and equitable principles.

These observations sufficiently give answer to the argument made in the last paragraph of the opinion (Rec., p. 29) of the District Judge and concurred in by the Circuit Court of Appeals, that McGehee's interpretation merely evidenced a mistaken conception as to the "legal effect" of the act of adoption.

Respectfully submitted,

E. HOWARD McCALEB,

Counsel for Appellants.

MISSING PAGE

and of statutes of Louisiana under which they were had are exhibited with the bill. George T. McGehee died in February, 1906, seized and possessed of the lands in controversy, which he had acquired long after the adoption of the appellants. The wife of George T. McGehee died in February, 1893. Both he and his wife were resident citizens of the State of Mississippi at the time of the adoption and at the time of their deaths. George T. McGehee owned no property in Louisiana at the time of the adoption or at the time of his death. The appellees are the heirs-at-law of George T. McGehee, entitled to inherit his lands under the statutes of Alabama, unless the appellants, by reason of the adoption, are his heirs, and, therefore, entitled to inherit the lands. It is averred, as a conclusion, that "under the said adoption proceedings had in the State of Louisiana, the said George T. McGehee and his wife did 'invest them [the appellants] with all the rights and benefits of legitimate children in their estate in the same manner and to the same extent as if said minors, Odile Mussom Hood and Ida Richardson Hood [the appellants], had been the daughters of said George T. McGehee and Elizabeth B. McGehee,' and especially in said property in the State of Alabama, because of Section 1 Article 4 of the Constitution of the United States," and the act of Congress passed in pursuance thereof, both of which are set out in the bill. The bill also avers that the appellants, through their tenant, are in possession of the lands in con-

troversy, and that these lands are claimed by the appellees.

The second aspect of the bill is thus stated:

> "Your orators furthermore allege and claim that by **virtue of said instruments in writing, marked Exhibits "A" and "B", hereinbefore made a part of this bill [the adoption proceedings]**, the said George T. McGehee and Mrs. Elizabeth B. McGehee, his wife, did actually enter into a formal and valid contract by which they contracted with said infants and their tutrix, the representative of said infants, to **'invest them with all the rights and benefits of legitimate children in their estate,'** and that ample and sufficient consideration, **as shown in said instruments marked Exhibits "A" and "B",** passed to make it a binding contract between your orators and the said George T. McGehee and wife, as well as upon their heirs at law; that your orators on their part performed all the duties of children towards their adopting parents; and they, therefore, aver that **said contract** should be specifically performed and enforced against the estate of the said George T. McGehee and any and all claimants to said property, and especially against the defendants in this suit."

Turning to Exhibits A, B and C to the original bill, containing the full proceedings of adoption, and some, but admittedly not all the statutes of Louisiana, by authority of which they were had, for a true and exact statement of what was done, and the effect thereof, we find (Exhibit C)

that under the statutes of Louisiana any person of a given age, or if married, by concurrence of both, may adopt another as his child, except those illegitimate children whom the law prohibits him from acknowledging, "but such adoption shall not interfere with the rights of forced heirs." The procedure of adoption seems to be prescribed, in part at least, by act 31 of 1872, which provides, in substance, that the adoption shall be **"by act passed before any parish recorder or notary public,** and, if the child shall have a parent, or parents, or tutor, **the concurrence** of such parent or parents or tutor shall be obtained, and, as evidence thereof, shall be required to sign said act." It is also provided in the Civil Code of that state that "the person adopted **shall have all rights of a legitimate child in the estate of the person adopting him,** except as above stated." As indicated above, the exhibit does not pretend to set out all the statutes of Louisiana pertaining to the subject, for it concludes: "And such other acts as were of force at the time of the adoption proceedings." Rec. p. 10.

As to the construction of these statutes, and the rights acquired thereunder, by the Supreme Court of Louisiana, see:

Succession of Vollmer, 4 So. Rep. 254;
Succession of Unforsake, 19 So. Rep. 602;
Succession of Caldwell, 36 So. Rep. 140;
Cunningham v. Lawson, 36 So. Rep. 107.

These decisions, if necessary, may be looked to by this court.—Lamar v. Micou 114 U. S. 218. We further find (Exhibits A and B) that the initial step taken in the proceedings of adoption was a petition filed in the Second District Court for the Parish of Orleans, in the State of Louisiana, by George T. McGehee and wife, stating their residence and occupation, their desire to adopt and rear, as their own children, the appellants, whose age, parentage and residence are given, and whose parents are dead; that their grandmother, Eleanora R. Hennen, is their tutrix; and that the petitioners, with a view to benefit the appellants, and to afford them the advantages of a liberal education and proper maintenance, "solicit the authority to accept them and rear them as their own children." The petition concludes with a prayer that the petitioners "be permitted to adopt the aforesaid minors and to appear before Andrew Hero, Jr., Notary Public of this Parish, to sign and execute the necessary act of adoption; and that all other orders be granted as may be necessary in the premises." The consent of the tutrix is appended to the petition, in which is stated that "considering that the desired **adoption** is to the benefit and advantage of said minors," consent is given that the prayer of the petitioners be granted, and that "they may be authorized to **adopt** the within named minors." Rec. p. 9.

Upon presentation of the petition, the judge of the court made the following order:

> "Let the petitioners be authorized to **adopt** the within named minors, Odile Mussom Hood and Ida Richardson Hood, as prayed for; and they are hereby **referred** to Andrew Hero, Jr., Notary Public of this Parish, **for the purpose of executing the requisite act of adoption."** Rec. p. 10.

On the 16th of March, 1880, the day on which the above order was made, the Notary Public passed the act of adoption, which was duly signed, as required by the statute, in which George T. McGehee and his wife declare that, "being desirous of **adopting"** the appellants, they had filed the above mentioned petition, "to be permitted to appear before the undersigned notary **to execute the requisite act of adoption,"** and had obtained the order hereinabove set forth, and were by the judge making the order referred to the notary **"for the purpose of executing the act of adoption;"** and that "in consideration of the premises, and by virtue of the provisions" of the statutes of Louisiana, "**they do by these presents formally adopt" the appellants;** and **"bind and obligate** themselves to support, maintain and educate them as if they were their own children; and **hereby invest them with all the rights and benefits of legitimate children in their estate,** in the same manner, and to the same extent as if said minors, Odile Mussom Hood and Ida Richardson Hood, had been the daughters of said George T. McGehee and Elizabeth B. McGehee." Then follows the approval by the grandmother and tutrix of

"the aforesaid adoption," and, in token of her concurrence in **"this act of adoption,"** she joins in the execution of the instrument and signs **"this act of adoption."** Rec. pp. 6, 7.

We presume, from the averments of the bill, as no attack is made upon the regularity of the proceedings, or their validity, but, on the contrary, the bill expressly avers the **adoption** under the laws of the State of Louisiana, and one equity of the bill is expressly made to rest upon their validity, that the proceedings had were in conformity with the laws of Louisiana, and in accordance with the usual forms then used in such proceedings.

Three amendments to the bill were allowed and filed. The first merely corrects errors in respect to the defendants. The second sets out a letter written by George T. McGehee, in February, 1899, to the appellants, which letter was, after the death of George T. McGehee, admitted to probate in Mississippi, the state of his domicile, as his last will and testament; and a copy of the letter is exhibited with the bill. After stating some financial disaster, the letter proceeds:

> "Besides this house and its contents, I had an insurance of $2000 in Knights of Honor, which I will keep alive in your favor as long as I am able to do so. I have burnt up my will because you are my natural or rather legal heirs under the Act of Adoption, and will inherit all that I die possessed of after my debts are paid, library and all, except my gold watch which I want to go to Schanniber

> McGehee, and my and Lilly's letter and trinkets in my armour which go to Kate Gender. Everything else of mine is to be yours equally divided.
>
> "This looks like a last will and testament—will be valid as such. So take [care] of it, for I don't expect to make any regular will. But don't let this make you sad; it is only a wise precaution which a man of 66 years ought to take to save his heirs trouble." Rec. p. 17.

This letter was not attested by witnesses, and, therefore, was not under the laws of Alabama effective as to real estate. Besides, there is no averment that it was ever probated in Alabama.

The third amendment avers, in substance, that, at the time of adoption, or at any time subsequent thereto, the McGehees did not own any property in Louisiana or elsewhere, except that at some time subsequent to the adoption George T. McGehee acquired "certain property in Mississippi and Arkansas, as well as the property in suit;" that immediately after the adoption, and when the appellants were of the age of three years (they being twins), George T. McGehee and his wife took the appellants from the State of Louisiana to "the McGehee home in Mississippi, where George T. McGehee and his wife then and always resided; that appellants took the name of McGehee and continued to live with George T. McGehee and wife until their deaths, covering a period of nineteen years, during all which time they performed

the obligations of children under said contract, and rendered valuable services to the said McGehee;" and that, in the year 1894, "and for the purpose of relieving the said George T. McGehee from his then serious financial embarrassment and consequent great distress of mind, your orators procured the sum of $8,600 as their share of the 'Hood Relief Fund,' established by voluntary contributions made throughout the Southern States for the benefit of the children of the said late General John B. Hood, by virtue of certain judicial proceedings had in the State of Mississippi, resulting in a decree entered May 14th, 1894, removing their civil disabilities so that they were empowered to receive and receipt for any and all moneys and property, wheresoever situated, and immediately thereafter turned the same over to the said George T. McGehee for the purpose aforesaid; said sum has never been repaid." Rec. p. 30.

The appellees filed a demurrer to the bill, as last amended, raising the questions hereinafter discussed, which was sustained by the trial court, and, appellants refusing to further amend, the court thereupon dismissed the bill. The trial court handed down a well considered opinion in the case, which will be found in the transcript on pages 24-30. This opinion is also reported in 189 Fed. Rep. 205.

From the decree rendered by the trial court, an appeal was taken to the Circuit Court of Appeals for the Fifth Circuit. That court affirmed the decree of the trial court, handing down

a short opinion, concurring in the opinion delivered by the trial court.—Hood v. McGehee, 199 Fed. Rep. 898; Rec. p. 38.

ARGUMENT.

FIRST.

Under the statutes of descent in Alabama, as construed by the Supreme Court of that state, children adopted under statutes of a foreign state do not inherit from adopting parents.

Whatever may be the rule in other states, it is settled in Alabama that children adopted under the laws of a foreign state are not children within the meaning of the statutes of descent of that state, and, therefore, do not inherit under those statutes.

We have two statutes in Alabama upon the subject, one the general statute of descent, and the other, a statute specially providing for children adopted under the statutes of Alabama. The general statute of descent provides, among other things, that real estate descends, subject to certain charges:—(1) "To the children of the intestate or their descendants, in equal parts;" and (2) "if there are no children or their descendants, and no father or mother, then to the brothers and sisters of the intestate, or their descendants, in equal parts."—Code (1907), § 3754. The statute relating to the adoption of children, after declaring that "any person desirous to adopt a child **so as to make it capable of inheriting his**

estate, real and personal" may make such adoption by filing and having recorded in the office of the judge of probate of the county of his residence a stated declaration, expressly provides that such declaration, when executed, filed and recorded as required by the statute, "has the effect to make such child capable of inheriting such estate of the declarant."—Code, (1907), § 5202. This statute has since been amended (Acts 1911, p. 114), but the amendment does not change the provisions above set out.

In Brown v. Finley, 157 Ala. 424, the Supreme Court of Alabama held, quoting from the first-head-note, which correctly states the effect of the decision:

> "Although the statutes of a foreign state confer the right of inheritance on a child adopted under them, such statutes have no extra-territorial operation, and an adoption under them does not confer the right of inheritance in this State."

In that case the facts were that James Finley, deceased, in 1903, adopted as his child James Jordan, an infant of tender years, under the laws of the State of Georgia, changing the infant's name to James Finley, Jr. At the time of the adoption both persons lived in Georgia. In 1906, James Finley died unmarried, leaving no children born unto him, and no father or mother and no brothers or sisters, or lineal descendants of brothers or sisters, except one brother, Alexander Finley. At the time of his death, James Finley, who

died intestate, resided in Georgia and left real estate situated in Georgia, Alabama and other states, but left no personalty in Alabama. Under the adoption had in Georgia James Finley, Jr., the adopted son, claimed as heir under the Alabama statutes of descent the lands in controversy in that case, against the decedent's brother, Alexander Finley. The statutes of Georgia, under which the adoption was had, conferred, as stated in the opinion, upon the adopted child "the right of inheritance of the property of the adopting parent in that State." The court held that the brother, and not the adopted child, inherited the lands.

The decision in that case follows the decision by the court in Lingen v. Lingen, 45 Ala. 410, which was decided in 1871, and in which the facts were that, in 1855, Dr. George Lingen, a citizen of Alabama, became the father of a bastard, conceived in Alabama, but born in France, where the mother had gone. In 1859, Dr. Lingen, who was then in France, acknowledged the child as his legitimate son under and in accordance with the laws of France, whereby the child became legitimated under those laws. Afterwards, in 1865, Dr. Lingen married, and then died in Alabama, his domicile, intestate, leaving a widow and infant son by the marriage. A bill in equity was filed by the illegitimate child, praying, upon the facts stated, that he be decreed to be the legitimate son, and, therefore, an heir of Dr. Lingen, and as such be decreed his distributive

share in his father's estate in Alabama, consisting of real and personal property. The court, declaring that in case of intestacy the **lex rei sitæ** controls the descent of real property, and the **lex domicilii** the distribution of personal property, and that there was no law of Alabama that gave validity to an act of legitimation in a foreign country, or in a sister state, and that, therefore, the incapacity of the illegitimate child still remained, and was fatal to his claim to share in the estate of his father, sustained a demurrer to the bill, and refused the relief prayed.

In Brown v. Finley, **supra**, the court, holding that the case was not distinguishable in principle from the case of Lingen v. Lingen, **supra,** further held that the decision in the latter case, "settling, as it did, a legal principle governing the descent and ownership of property, became a **rule of property,** and, having stood for so many years," should not be re-opened.

It might be added that since the decision in Lingen v. Lingen, **supra,** four codes of the state, which are not merely compilations of laws, but operate, by their adoption by the legislature, as statutes, have been adopted by the legislature without any change in our statutes of descent, or in our statutes upon legitimation of illegitimate children or adoption of children; and that thereby the legislature has recognized and accepted the construction placed upon the statutes of descent in that case; a well settled rule of construction in Alabama. In Southern Ry. Co. v. Moore, 128

Ala. 434, 450, the court, speaking of the re-enactment of a statute by the adoption of a code after that statute had been construed by the Supreme Court, says that by such re-enactment the construction thereof by the Supreme Court "became a part of the statute itself, foreclosing all inquiry as to the correctness of the decision which originally put the construction upon the act."

It, therefore, follows that the settled law of Alabama, whatever may be the rule adopted in other jurisdictions, excludes children adopted in a foreign state or country from inheriting real estate situated in Alabama under our general statute of descent.

It is manifest that the other statute, the statute authorizing the adoption of children, is not broad enough to confer the right of inheritance upon appellants because, by its very terms, its operation is confined to children **adopted under and in pursuance of that statute.**

In Brown v. Finley, **supra,** reference is presumably made to this statute as the court says (p. 426):

> "And it may be, had he been adopted in this State in pursuance to the statute authorizing the adoption of children, the lands would have descended to him."

As this statute was of force when the decision was rendered, it may be presumed that the court gave it consideration. This statute, however, may be treated as a legislative construction that the

general statute of descent does not embrace adopted children; for if it did, there would have been no necessity for expressly conferring, as it does, the right of inheritance upon the child adopted under its provisions.

It is a well settled doctrine that the law of a state in which land is situated controls and governs its transmission by will and its descent in case of intestacy.

Clarke v. Clarke, 178 U. S. 186;
DeVaughn v. Hutchinson, 165 U. S. 566;
Olmsted v. Olmsted, 216 U. S. 386.

SECOND.

The construction placed upon the statutes of descent by the Supreme Court of Alabama is binding upon the Federal Courts.

This principle is too well settled for controversy.

Middleton v. McGrew, 23 How. 45, 47;
Gardner v. Collins, 2 Peters, 22, 23;
Burgess v. Seligman, 107 U. S. 20, 33;
Hanrick v. Patrick, 119 U. S. 156, 169;
Lindsley v. National Gas Co., 220 U. S. 61, 73;
Forsyth v. Hammond, 166 U. S. 506, 518;
Morley v. Lake Shore Railway Co., 146, U. S. 162, 167;
Louisiana v. Pilsbury, 105 U. S. 278, 294;
Clarke v. Clarke, 178 U. S. 186;
Leffingwell v. Warren, 2 Black, 599;
Thompson v. Sloss-Sheffield Co., 209 Fed. Rep. 840.

Reading the construction given the statutes of descent into those statutes, we have statutes excluding from the inheritance children adopted under the laws of a foreign state or country. It follows, therefore, that the real estate in controversy did not descend to the appellants. If not to them, it is conceded that it descended to the appellees as heirs-at-law of the adopting parent.

THIRD.

Permitting real estate in Alabama to descend according to the statutes of that State is no denial of full faith and credit to the proceedings of adoption in Louisiana.

In holding that the title to the land in controversy descended to the appellees, the courts merely give force and effect to the Alabama statutes of descent, as construed by its court of last resort; and in so doing they are in no way depriving the appellants of any right conferred upon them by the proceedings of adoption had under the statutes of Louisiana. There is no denial of the status of the appellants under the adoption, or the legal effect of the adoption; the status is conceded, and the only contention by appellees is, that the adoption of the appellants does not make them children within the meaning of the Alabama statutes of descent, although, under the statutes of Louisiana, the status of children is given them. To uphold the appellants' contention would be to

hold that the legislature of the State of Louisiana had authority, by proceedings had under its enactments, to change or modify the statutes of the State of Alabama; a proposition, we submit, the mere statement of which shows its fallacy. The learned judge of the trial court thus lucidly answers the contention:

> "Conceding that the Louisiana adoption proceedings come within the meaning of public acts, records or judicial proceedings, and are entitled to full faith in the sense of compelling recognition by other states of the adoptive relations created by them, it does not follow that the right of inheritance to real property follows such status, when recognized. Each state has exclusive jurisdiction of the regulation of the transfer and descent of real estate within its limits. It would be competent for the legislature of Alabama to deny the right to inherit real property to children adopted in its own courts by its own procedure. It would be competent for it to confer such rights on children of its own adoption and deny it to those of the adoption of foreign states. This is what Alabama legislation, as construed by its court of last resort, has accomplished. Section 5202, Alabama Code of 1907, provides a procedure to be followed for the adoption of children so as to make them capable of inheriting in Alabama real and personal property of the adoptive parent. The child adopted under this section is given the right by the terms of section 5202, and without necessity of resort to the statute of descents. No right to inherit is conferred on children of foreign adoption

by section 5202. The Supreme Court construed the word 'children' in the statute of descents (Sub. 1, § 3754, Code, 1907) as not including children of foreign adoption. It was competent for the legislature to so enact, and for the court to so construe its enactment, the state being absolutely free to regulate the descent of real estate within its limits as it sees fit. For these reasons the plaintiffs cannot claim the lands described in the bill under the Alabama statute of descents.

"There is no vested right in children born unto the parent in lawful wedlock to inherit; much less can that right be asserted, from the mere status, by children of adoption. In either case, it is a right to be claimed under the statutes of descent and distribution; and if denied by or not included in such statutes, it does not exist."

This contention has been, we submit, decided against the appellants by this court. In Olmsted v. Olmsted, 216 U. S. 386, where in principle the question was presented, the Court held, in the language of the head-note, as follows:

(1) "The law of a state in which land is situated governs and controls its descent, alienation and transfer, and neither a decree of a court, nor a statute of another state can have efficacy as to title of real estate beyond the jurisdiction of that state."

(2) "The full faith and credit clause of the Federal Constitution does not require the courts of a state to give effect to a statute legitimatizing children born before wedlock

> after marriage of their parents so as to affect interests which, under the laws of the state where the property is located, had been so vested that it cannot be affected by subsequent legislation; and so held that the courts of New York are not required to give effect to a statute of Michigan so as to vest in the children of the testator legitimatized by such statute property, the title to which had already vested in his other legitimate children."

True, in that case, the statute of Michigan ruled on was enacted after the interests in lands situated in New York had vested under a will of a citizen of New York, probated in that state, but this Court was speaking to the facts as developed in that case, and the opinion shows that the Court did not rest the decision solely on that fact. Mr. Justice Day, delivering the opinion, says:

> "We think there is nothing in the due faith and credit clause which requires the courts of New York to give the effect contended for to the Michigan statute. The legislature of Michigan had no power to pass an act which would affect the transmission of title to lands located in the State of New York. No more had it power to legislate concerning the title to lands in New York than the courts of Michigan, by their judgments, would have authority to adjudicate such rights."

And in the concluding sentence of the opinion, the learned Justice says:

> "We hold that there is nothing in the Federal Constitution requiring the courts of the state of New York to give force and effect to the statute of the State of Michigan so as to control the devolution of title to lands in New York."

The same principle in recognized in Clarke v. Clarke, 178 U. S. 186, 190, and in Fall v. Eastin, 215 U. S. 1.

The contention of the appellants, therefore, must fail in this aspect of the bill.

We will state in passing from this branch of the case that the appellants did not derive the legal title to the lands by virtue of the letter averred in one of the amendments to the bill to have been written by George T. McGehee to the appellants, and which was probated in the State of Mississippi as his last will and testament; and this (1) because it is not executed in the manner prescribed by the statutes of Alabama, and (2) because it has never been admitted to probate in that State. The statutes provide that no will is effectual to pass real or personal property, except personal property not exceeding in value five hundred dollars, and except wills disposing of personal property by soldiers in actual service and marines or seamen at sea, unless the same is in writing, signed by the testator, or some person in his presence, and by his direction, **attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator.**—Code of Alabama (1907), §§ 6172, 6176, 6178.

This statute has been construed in accordance with its plain provisions.

Woodruff v. Hundley, 127 Ala. 640;
Blackshear Co. v. Northrup, 176 Ala. 190.

In the brief filed on behalf of appellants (p. 9) it is contended, upon the authority of Leatherwood v. Sullivan, 81 Ala. 458, and Sullivan v. Rabb, 86 Ala. 433, that, as the letter was admitted to probate in Mississippi, and as, under the statutes of Alabama, it can be admitted to probate in Alabama on a certified copy of the proceedings in Mississippi, such probate would make the letter effectual as a will to pass title to real estate situate in Alabama; that, in other words, the section of the Code authorizing the probate of a will, upon certified copy of the proceedings to probate same had in a foreign state, created an exception to the section of the Code requiring two witnesses to a will in order to render it effectual to pass real or personal property. This, we submit, is unsound, and is supported by no adjudicated case in Alabama. It would be strange indeed that our statutes should so discriminate, and thereby render effectual, upon an ancillary probate, what would not be effectual upon an original probate. In the cases cited by adverse counsel, both of which involved the same will, the only question was the validity of the appointment of an executor nominated in a will that was not properly attested, but which had been admitted to probate in this state upon cer-

tified proceedings of probate had in Florida; in neither case was the question of the passing of the title to property involved. But these cases have been construed and limited, if not doubted, in the more recent case of Blackshear Co. v. Northrup, **supra;** for in that case, where a will not properly executed had been admitted to probate in this state upon original proceedings, the court expressly held that the proceedings were void, and subject to collateral attack in a case involving title to land; and the reasoning, as well as the criticism of the two cases cited by adverse counsel, shows that no will, however probated, which was not attested as required by the statute, operated to pass title to land.

FOURTH.

The adoption proceedings do not operate as an agreement to convey or devise the lands.

(1)

An analysis of the bill of complaint demonstrates that the appellants do not rely upon any contract, verbal or written, outside of the act of adoption. The sole basis for their claim is the latter part of the following clause of that act: "**Bind and obligate** themselves [the McGehees] to support, maintain and educate them [the appellants] as if they were their own children; and **hereby invest** them with all the rights and benefits of legitimate children in their estate, in the

same manner and to the same extent as if said minors, "naming them," had been the daughters" of the McGehees (Tr. p. 9). It is this clause of a **completed act of adoption,** the validity of which has never been challenged, but is now recognized even in this proceeding, that is seized upon by the appellants to work out an agreement operating independently of the act of which it is a part, and the effect of which will be to give the appellants greater rights than are given by the adoption itself; and this is resorted to because the Supreme Court of Alabama, in construing its statutes of descent, has limited the effect of the adoption to a greater extent than was probably thought by the McGehees when they executed it, and to avoid such limitation.

A casual examination of the act of adoption, and of the steps leading up to its execution, will demonstrate, we submit, that the controlling, the only purpose of the contracting parties was the adoption of the appellants by the McGehees under the laws of Louisiana; and that the act itself was merely the final step taken in consummation of that purpose. There is nothing in the record to show that, by previous negotiations or otherwise, the parties contemplated the acquisition by the children of any other or greater rights than those conferred by the statutes of Louisiana upon adopted children, or that the McGehees intended to confer upon them any other or greater rights. Each step from the petition to the final act evidences this as the controlling purpose contem-

plated by the parties to be effected. The petition was for leave to adopt; the order was to refer the parties to a notary for the sole purpose of executing an act of adoption; and the act itself, as shown by its recitals, was executed by or before the notary in pursuance, and by virtue of the order of reference, which alone was the authority under which the parties acted. No authority was conferred upon any one to do anything whatsoever save to execute the act of adoption, which, under the laws of Louisiana, was essential to the adoption. Under this order of reference neither the notary nor any of the parties was authorized to add to or to take from the rights, powers and obligations resulting, under the statutes of Louisiana, from the adoption.

It must be presumed, therefore, that the notary, in passing the act, and the parties in executing the same, had only the purpose of consummating the adoption; not intending, by any phraseology used, to enlarge or restrict the effect of the adoption. This becomes more apparent when we compare the language of the act relied on with the terms of the statutes authorizing the adoption, and with the implied obligations of the adopting parents thereunder. These implied obligations were to "support, maintain and educate" the children "as if they were their own children"; and the repetition of these obligations in the act added nothing to their legal effect. The express provision of the statute is, that "the person adopted shall have all the rights of a legitimate

child in the estate of the person adopting him, except as above stated;" this exception being that "such adoption shall not interfere with the rights of forced heirs." Here we have a declaration of the rights of the children resulting from the adoption; rights given by the statute, which could not be enlarged or diminished by the manner in which the act of adoption was executed, or the language used therein, provided the act, as in this case, clearly evidences the intention to adopt. The language used in the act in respect to the rights of the children substantially follows the language of the statute, merely omitting the exception as to forced heirs, and changing the general phraseology of the act so as to fit the particular case. The omission of the exception doubtless resulted from the circumstances of the adopting parents, they not having children of their own then living, and without probability of thereafter having them. This may be, and doubtless was unnecessary; but the question is, what was the intent of the parties in inserting the words. Was it merely to declare the effect of the statute, or was it to create an additional and independent right? Construed in the light of the manifest purpose of the parties to be attained, as shown by the recitals of the act and the steps taken leading up to its execution, and in the light of the authority delegated to, or conferred upon the notary by the order of reference, it is, we submit, clear that the purpose was only to declare the effect of the adoption under the statutes.

It may be, and doubtless is true, as indicated in the letter written by Mr. McGehee to the appellants exhibited with one of the amendments to the bill, that he believed that the adoption of the appellants clothed them with the right to inherit all property left by him at his death, wheresoever situate; but this error in construction cannot change the rights of the appellants. And in this connection it should be noted that this letter bases the rights of the appellants upon the adoption, and not upon any independent agreement contained in the act. The idea contained in the letter is that, in law, the appellants were his children, and, as such, were entitled to inherit; not that he had specifically stipulated with them that they should succeed to his rights of property at his death. Thus he shows that he did not anticipate any other result flowing from the adoption, in Louisiana or any other state, than that the appellants would inherit to the same extent as if they were his own children by blood. But, we repeat, this error can not enlarge the rights of the appellants. As was said in Russell v. Russell, 84 Ala. 51, by a distinguished jurist: "The known wish of a testator can avail nothing if he fails to take the legal steps necessary to carry it into effect." When he uttered these words, he conceded that their effect worked "a great hardship," but, with that unswerving loyalty to established law which always characterized him, he did not allow the result to control him. He recognized that his function as a judge was, not to make

contracts, not to create rights, but merely to decide what the law was as applicable to the particular case before him. No truer saying was ever uttered than that hard cases make bad law; and yet, that saying is founded upon a spirit laudable in itself; but when allowed to influence judicial decision, it often becomes destructive of legal principles.

Assuming that the parties had been considering property rights and their devolution upon appellants as the controlling purpose, a fact not shown by the bill, their acceptance of the adoption proceedings to accomplish this end, through a mistake as to their legal effect, cannot afford any ground of equitable relief, even if the bill was filed to reform the proceedings; certainly, the acceptance cannot be the basis of relief under the bill as filed.

In 2 Pom. Eq. Jur. § 843, that learned author says:

> "The rule is well settled that a simple mistake by a party as to the legal effect of an agreement which he executes, or as to the legal result of an act which he performs, is no ground for either defensive or affirmative relief."

Again, in the same section, he says:

> "If an agreement or written instrument or other transaction expresses the thought and intention which the parties had at the time and in the act of concluding it, no relief, affirmative or defensive, will be granted

with respect to it, upon the assumption that their thought and intention would have been different if they had not been mistaken as to the legal meaning and effect of the terms and provisions by which such intention is embodied or expressed, even though it should be incontestably proved that their intention would have been different if they had been correctly informed as to the law."

In Hunt v. Rousmaniere, 1 Pet. 1, the headnote thus states the principle as applied in that case:

"Where parties deliberately agree not to secure a debt by mortgage, but to give and receive a power of attorney authorizing the creditor to sell certain property of the debtor, and apply its proceeds to the payment of the debt, and the power is annulled by the death of the debtor, a court of equity will not direct a new security to be given, or fix a lien on the property as security for the debt, though satisfied that the parties acted in ignorance of that rule of law, which makes the death of the constituent a revocation of the power."

In the opinion in that case, it is said (p. 14):

"Equity may compel parties to perform their agreements, when fairly entered into, according to their terms; but it has no power to make agreements for parties, and then compel them to execute the same. The former is a legitimate branch of its jurisdiction, and, in its exercise, is highly beneficial to society. The latter is without its authority,

> and the exercise of it would be not only a usurpation of power, but would be highly mischievous in its consequences."

Snell v. Insurance Co., 98 U. S. 85, is not in conflict with our contention; it is clearly distinguishable from this case. There, parties had made a parol agreement for insurance, and afterwards a policy of insurance was executed, which did not comport with the parol agreement; and the Court reformed the policy so as to effectuate the parol agreement. The Court, in the opinion, says (p. 92):

> "In deciding, therefore, as we do, that the complainants are entitled to have the policy reformed in accordance with the original agreement, it is not perceived that we enlarge or depart, in any just sense, from the general and salutary rule, that a mere mistake of law, stripped of all other circumstances, constitutes no ground for the reformation of written contracts."

Nor is Griswold v. Hazard, 141 U. S. 260, in conflict with our contention. In that case it was held that the taking of the bond under consideration was, under the facts of that case, a "fraud in law" upon the obligors; and, therefore, an exception to the general rule.

In the instant case, there is nothing whatever in the bill to show that the parties, in executing the act of adoption, contemplated more than what that act, when executed, effected. Adoption, not any agreed result, was the controlling, and,

so far as disclosed, the only purpose of the parties. In adoption, there is involved far more than the rights to property; the more important consequence is providing a home for the child, and for his nurture, maintenance and education; factors of far more importance than the acquisition of property upon the death of the adopting parent. It is not even shown that at that time the McGehees were people of wealth; on the contrary, it is averred in one of the amendments to the bill (Rec. p. 30), that at the time of the adoption the McGehees did not "own any property in Louisiana or elsewhere"; but afterwards acquired certain property in Mississippi, Arkansas and Alabama. It does appear, however, that they were **friends** of the appellants' family residing in Mississippi; and that they desired to adopt the appellants, and that their tutrix and grandmother was willing that they should be adopted. In the light of this statement, it cannot be that the acquisition of property by the appellants was at all considered.

We, therefore, submit that if the case presents a question of mistake, it is "a mere mistake of law, stripped of all other circumstances," as to the legal effect of the adoption.

It seems to be contended here, though not in the lower courts, that, in some way not clearly defined, the letter above referred to, aids the asserted equity of the appellants. If the alleged contract rested in parol and there was a conflict in the evidence as to the facts, the letter might

be looked to in determining whether the contract was made; but, as heretofore shown, the asserted existence of such a contract does not rest in parol, but depends upon the construction of the act of adoption. The letter, in itself, is not, and does not purport to be a contract. It is but the expression of the writer's conviction of the effect of the adoption; and that effect cannot be changed by any subsequent declarations, verbal or written. This was held in Bowens v. English, 101 N. W. Rep. (Mich.), 204, and in Albring v. Ward, 100 N. W. Rep. (Mich.), 609, cases involving similar litigation.

The argument is made by adverse counsel that the letter is a construction placed upon the agreement of the parties, and, therefore, it should have a controlling effect. But this is a misapplication of the rule of construction invoked. It is not a construction of an agreement of doubtful meaning; but merely evidences the belief or conviction of one of the parties as to the legal effect of the adoption. This is clearly shown by the language of the letter.

We submit, therefore, that the act of adoption only accomplished the legal adoption of the appellants by the McGehees, leaving the rights acquired by the appellants thereunder to be determined by the statutes under which the proceedings were had; and that no independent agreement or covenant was intended thereby, enlarging those rights. This conclusion, we will add, is in

harmony with rules of construction promulgated in the decisions of this court.

In Boardman v. Lessees of Reed & Ford, 6 Pet. 140, it is said:

> "The meaning of the parties must be ascertained by the tenor of the writing, and not by looking to a part of it."

In Heryford v. Davis, 102 U. S. 243, it is said:

> "What, then, is the true construction of the contract? The answer to this question is not to be found in any name which the parties may have given to the instrument, and not alone in any particular provision it contains, disconnected from all others, but the ruling intention of the parties, gathered from all the language they have used. It is the legal effect of the whole which is to be sought for."

To the same effect is Beardsley v. Beardsley, 138 U. S. 266.

In Bell v. Bruer, 1 How. 169, it is said:

> "That construction of a contract should be adopted, which, under all the circumstances of the case, ascribes the most reasonable, probable and material conduct of the parties."

In Scott v. United States, 12 Wall. 443, it is said:

> "In construing a doubtful contract, it is the duty of the court to inform itself of the

circumstances surrounding the parties at the time, so as to interpret the language employed from the standpoint occupied by the parties when they executed the contract."

See also:

Walker v. Brown, 165 U. S. 654;
Merriam v. United States, 107 U. S. 437;
Chicago, etc. R. Co. v. Denver, etc. R. Co., 143 U. S. 596.

(2)

Giving to the clause in the act of adoption relied on by appellants an operation independent of the effected adoption, it must be construed in the light of, and as restricted by the statutes of Louisiana. The act of adoption was had under those statutes, and whatever agreement results from the language used must be held to relate to property rights under the statutes of that state. The adoption must be so construed, and to hold that the agreement has a broader scope would be to hold that the incidental purpose of the parties has a wider scope than the controlling purpose. If, as held by the Supreme Court of Alabama in the case cited, the act of adoption could have no effect upon property in Alabama, it would, we submit, be an anomaly in law that such an effect should be given indirectly to a part of the proceedings had to accomplish the adoption. Of course, a valid agreement made between the parties, founded upon a valuable consideration

to devise all or a definite part of property owned at McGehee's death, could be enforced; but here the question is, not whether such agreement, when made, could be enforced, but what was the intention of the parties in incorporating the language relied on into the act of adoption.

(3)

As heretofore suggested, the language relied on by the appellants to create an executory agreement does not import a **covenant,** but a **grant,** a grant **in præsenti,** of the rights of children in the estate. This language is not only important in arriving at the intent of the parties, as hereinbefore discussed, but it also shows no purpose to covenant that the McGehees **will** invest them with the rights of children, but they **"hereby invest"** them with those rights. There is neither an implied nor an express covenant to do anything. This appears more clearly when you compare this language with the language just preceding in respect to the support, maintenance and education of the children; in that regard we find the language to be "**bind and obligate themselves to** support, maintain and educate them as if they were their own children." This change of language is most significant, not only as showing, as hereinbefore contended, that the parties merely intended to declare the effect of the adoption, but also that the McGehees did not intend to covenant that they would thereafter do any act, the effect of which would be **to invest** the children with any

rights of property not resulting from the adoption itself—the thing alleged in the bill, and the end sought to be enforced in this suit. The appellants rely upon this clause as constituting the agreement sought to be enforced; and by its effect, even if it has an independent operation, they must stand or fall. The Court will not construe away the natural import of the language used, nor change its effect by interpolating words of covenant when none exist.

We, therefore, submit that the bill fails to show any covenant or agreement to be specifically enforced.

Again, whatever of conflict may exist in the decisions of the courts in respect to the effect, validity and enforcement of an **agreement** to adopt, or to place children of a stranger in the status of children of the promisor, or to make them his heirs, there can be found, so far as our investigation goes, no case upholding the doctrine that one can **grant** the right of inheritance. This is essentially and exclusively a legislative function. Therefore, **as a grant,** the clause is without effect.

(4)

Treated as an agreement to invest the appellants with the rights of children in the estate, the effect of the agreement would be to invest them with the rights of inheritance. Whether such a contract is enforceable or not, there is conflict in the adjudged cases; in some, such contracts are held invalid and unenforceable, while in others they

have been enforced. In the latter cases, however, the courts seem to have either assumed that such contracts are equivalent to contracts to **will** or to **leave** at the death of the promisor the whole or a part of his property to the child, or they have been constrained to grant relief because of the gross inequity resulting from withholding relief; and in some cases the decisions could have been the better based upon principles of estoppel.

In Albring v. Ward, 100 N. W. Rep. (Mich.), 609, there had been an adoption under an act of the legislature which had been previously held to have been unconstitutionally enacted, and, therefore, void. The adopting parent having died, the adopted child filed a bill in equity, seeking specific performance of an asserted contract resulting from the void and ineffective adoption proceedings. The court, holding that heirship can be created only by law, and that heirship by adoption was unknown to the common law, further held that no legal contract resulted from the adoption proceedings in favor of the child, and refused relief. The court says:

> "If the statute is held void, or, if valid, is not complied with, the adoption fails, and the supposed adopted person obtains no interest in the property or estate of the adopting person. Void articles of adoption are no evidence of themselves of a contract for an interest in property, real or personal. * * * * Complainant had no contract with Mr. Ward, the specific performance of which she

> could enforce. At most, it was only a statutory proceeding to establish heirship, which left the right of property to depend alone upon such heirship. Such void articles for heirship cannot be converted into a contract for the sale of land, and complainant in this suit claims only an interest in land by virtue of a supposed contract."

In that case counsel for the complainant relied on the decision in the case of Wright v. Wright, 99 Mich. 170, 58 N. W. 54, 23 L. R. A. 196, as does counsel for the appellants in this case. Mr. Justice Grant, who participated in the decision in the case of Wright v. Wright, after stating that each case of this character must stand upon its own peculiar circumstances, and after stating the facts of that case for the purpose of showing what amounted to an equitable estoppel, and after distinguishing the facts in the two cases, concludes:

> "If Wright v. Wright is construed by the profession to mean that void articles of adoption can afford the basis of a contract for heirship, it should, in my judgment, be overruled."

In Bowens v. English, 101 N. W. Rep. (Mich.), 204, a bill in equity for specific performance of an agreement to adopt, the court, after citing Albring v. Ward, **supra,** says:

> "If executed articles of adoption under a void law are not a sufficient basis to make one a legal heir, and to constitute an agreement to

> convey land, certainly, an agreement to adopt, and to take steps, if necessary, to secure such adoption, cannot be made the basis of an agreement to convey land."

In Davis v. Jones, 94 Ky. 320, 42 Am. St. Rep. 360, an action at law for damages for breach of a contract that the promisor "would clothe, support and educate" the child "and make her his heir at law, so that she could inherit all his estate," the court held that the contract was not authorized by law, and, therefore, unenforceable. After referring to the provisions of the statute for adoption, the court says:

> "It has been settled by this court that the authority thus given is the only authority existing in this State by which one person can make another his legal heir, and any agreement by one person to make another his legal heir, not in accordance with said statute, is not enforceable."

In Davis v. Hendricks, 99 Mo. 478, 12 S. W. Rep. 887, a bill for specific performance was filed, alleging a contract that a testator would adopt plaintiff as his child, **and would grant and devise to her all his property at his death.** Afterwards, there was an adoption by special act of the legislature. The court held that the contract, as alleged, was not supported by the evidence, which showed only that the testator agreed **to adopt plaintiff as his child and make her his heir,** and, therefore, denied relief. The litigation in that case arose

out of a will by the adopting parent executed after the adoption, by which provision was made for the complainant, but not according to her contention under the alleged contract. The effect of the decision is, therefore, we submit, that an agreement to adopt and make the child an heir is not equivalent to an agreement to will or devide property.

In Clark v. West, 73 S. W. Rep. (Texas), 797, the action was at law for breach of an alleged contract, by which a man and his wife, in consideration of personal services, agreed to adopt a child, or "in some way fix things so that" the child "should have their property at their death;" that they would either adopt the child or will their property to her. The agreement was repudiated by the promisors. In passing upon a charge to the jury, the court says:

> "The effect of the adoption of Louisa was to put her in the same attitude towards the adopting parents as if she had been their child. The charge under examination did not make the right to recover depend upon a promise by Clark that he and his wife would leave their property to Louisa, but upon the effect a promise to adopt her may have had upon her mind in inducing her to live with, and to serve them. In the absence of an agreement to leave their property to the adopted child, the promise to adopt would not support a claim beyond the statutory provisions."

In Sharkey v. McDermott, 91 Mo. 648, 4 S. W. 107, the facts and the decision are thus stated in the first head-note:

> "A man and his wife agreed to adopt a child **and leave her their property** at their death. The child accordingly went to live with them, obeyed them as parents, and paid them her wages for many years, amounting to $2,500. The man died, devising the estate to his wife, and the wife afterwards died suddenly without making a will. They failed to formally adopt the child, as required by the statute, so as to make her their heir-at-law. **Held,** in an action by the child against the heirs-at-law, that the agreement was valid, and she was entitled to specific performances."

The Court, however, in the opinion, says:

> "This agreement was not merely and solely one to **adopt** the plaintiff, but was in part to **leave plaintiff the property at their death."**

See also:

Tyler v. Reynolds, 4 N. W. Rep. (Iowa), 902;
Shearer v. Weaver, 9 N. W. Rep. (Iowa), 907;
United States Trust Co. v. Hoyt, 135 N. Y. S. 849.

An adoption operates to fix the status of the child, and ordinarily to confer upon him the right of inheritance; an agreement to adopt is an agree-

ment to fix such status, and ordinarily to create the right of inheritance. The cases cited above, therefore, in respect to adoption were dealing with a contract, in substance, to make the child an heir, or to confer upon him the right of inheritance; and they are, for that reason, in point.

We desire now briefly to review some of the cases usually relied on as asserting the contrary doctrine.

Van Tine v. Van Tine, 1 L. R. A. 155, was decided by the New Jersey Chancery Court, opinion by Bird, Vice-Chancellor. There a brother delivered to a childless sister full dominion over his daughter, a child of tender years, with the full understanding that his sister would take the child as her own, and provide for her and bring her up as her own; the court concluded from the facts that this was as complete an acceptance of the child, on the part of her aunt, "coupled with every fair, just and reasonable obligation to treat her as her child in all respects, as could be effected without writing." There was no adoption, nor any express agreement to adopt; on the contrary, the sister refused the request of the father to adopt the child. The sister executed a will, bequeathing her personal estate to the child, and died intestate as to the land in controversy in the suit. The court substantially decreed specific performance, holding that, when the sister said to the father of the child that she would take her "and would treat her as her own child she meant just what she said, both in law and in con-

science. She meant that Jessie [the child] should have all the benefit of the relation of parent and child." This is a remarkable and extreme case in view of the fact that the aunt refused to adopt the child. It is, however, conceded that, however unsound, the decision upholds the doctrine that such a contract can be enforced.

In Sharkey v. McDermott, 4 S. W. Rep. (Mo.), 107, 91 Mo. 647, a case often quoted and relied on, as supporting the doctrine contended for by the appellants, the contract was that the promisors "would provide and care well" for the child, "and adopt her as their child, and **leave her their property at their death.**" (Italics by the court). As shown by the opinion, it was this last clause that caused the court to grant relief; and it is clear from the opinion that the court did not base the relief upon the agreement to adopt; but, on the contrary, the implication is equally clear that the court would not have specifically enforced that agreement, if it had stood alone.

In Healey v. Simpson, 20 S. W. Rep. (Mo.), 881, the contract was, in language, one of adoption though not valid for that purpose, and that the child should have and inherit from the estate of the promisors "in the same manner and to the same extent that a child born of their union would inherit." The decision supports the doctrine; but it appears from the cases relied on that it did not consider the difference between a contract to **will** or **leave** property to one, and a contract to **adopt,** or that **the child should inherit.**

It declares that Sharkey v. McDermott, **supra,** was decisive of the case; and yet, in that case, as stated above, the decision was rested upon a contract to **leave,** that is, to will the property.

In Quinn v. Quinn, 5 S. D. 328, 49 Am. St. Rep. 875, the facts were peculiar. In that case, the child was regularly adopted, and, in addition to such adoption, there was an independent and parol contract by which the adopting parent, in consideration of the child's parent agreeing to the adoption, and that the child should remain with the adopting parent and serve him until he had attained his majority, agreed that he would board, clothe, etc., the child, and would give him, when he had attained his majority, certain personal property, and also would make the child one of his heirs-at-law, entitling him to inherit with his other heirs-at-law a just and full portion of the property of the adopting parent at the time of his death. The child continued with the adopting parent until the former attained his majority, rendering services which materially aided the latter in the acquisition of the property left at the time of his death. Before his death, the adopting parent entered into an unlawful and fraudulent agreement with the defendant to place his property in a condition so that the child could not get any part of it, and, in pursuance of this agreement, the adopting parent conveyed to the defendant large portions of his property, without consideration, and, just prior to his death, executed a will by which he gave the residue of his property

to the defendant. The material question raised in the case was, whether the parol agreement was not void under the statute of frauds, the defendant seemingly conceding that if it was not, the complainant was entitled to relief. The court held with the complainant on this question, and ruled that he was entitled to a decree cancelling the deed and will executed by the adopting parent.

In Burns v. Smith, 21 Montana, 251, 69 Am. St. Rep. 653, there was a contract of adoption, ineffectual under the laws of Montana, and also an agreement which, as construed by the court (page 665 Am. St. Rep.), "permitted the plaintiff," at the death of the promisor, "to have a child's share of his estate." The court decided that the plaintiff was entitled to relief; and it seems from the discussion and the authorities cited that the court treated the agreement as an agreement to devise or leave the plaintiff a child's part of the estate.

In Owens v. McNally, 33 L. R. A. (Cal.), 369, the contract was to **"give** or **bequeath"** to the child "all property which" the promisor "might own at the time of his death." The court held that generally such a contract was enforceable, but denied relief, because the promisor, after making the agreement, married and left a widow and a child born to him, and thus it became inequitable to decree specific performance.

In Daily v. Minnick, 60 L. R. A. (Iowa), 840, the agreement was merely that the promisor, if a

person would name an infant after him, "would give the child forty acres of land."

In Winne v. Winne, 166 N. Y. 263, 59 N. E. 832, 82 Am. St. Rep. 647, the contract was to keep and maintain a child as the own child of the promisor, "and at her death **give** him all her property, and make him her sole heir." It is manifest from the decision that the court allowed relief upon the part of the contract stipulating to **give** the child the property; for the court says:

> "In discussing the first proposition [i. e. that the contract was not enforceable], the appellants claim that the agreement was impossible of performance, because one person cannot make another his heir unless of his own blood. In a sense that may be true, but as the court found that the agreement by Mrs. Winne [the promisor] was to maintain the plaintiff as her own child and at her death **give** him her property, the addition of the words, 'and to make him her sole heir,' does not detract from the other words of the agreement."

In Grantham v. Gossett, 81 S. W. Rep. (Mo.), 895, a suit for specific performance, there were two counts in the complaint, one based on a contract to adopt the child as the lawful heir of the promisor, and the other based on a contract to "maintain and educate" the child, "treat her in all respects as one of his own children, and that she should share in his estate the same as though she was his own child."

The court below expressly found that there was no evidence to support the first count, but found for the plaintiff on the second count. The Supreme Court, however, reversed the judgment, holding the evidence in support of the contract insufficient. From the argument, however, it is fair to presume that the court considered the contract laid in each count was enforceable, though such a decision was **obiter dictum.**

In Furman v. Craine, 121 Pac. Rep. 1007, a decision by the District Court of Appeals, Second District, California, the contract, as found by the court, was "to take, adopt, rear and educate plaintiff" as the promisor's own child "and **give** her all the rights of a child in and to her estate, and to make plaintiff her heir-at-law so she would inherit the property of" the promisor "upon the latter's death." The court held that the contract was enforceable, but whether as a contract to will, or to adopt, or to make plaintiff an heir, is not stated.

In Wright v. Wright, 23 L. R. A. (Mich.), 196, there was at first an apprenticeship, and afterwards an adoption under an act which was declared unconstitutionally enacted, and, therefore, of no effect. There was no other agreement shown. By a divided court relief by specific performance was allowed. The dissenting opinion is a strong one to show that there was no contract enforceable by the court. The effect of this decision is much weakened, if the decision is not overruled, by the decision in the more recent case of Albring v.

Ward, 100 N. W. Rep. (Mich.), 609, heretofore cited and discussed.

In Kofka v. Rosicky, 25 L. R. A. (Neb.), 207, the contract, as found by the court (p. 211), was that the child should be taken by the promisors, "to be reared, educated and cared for as if she were their own daughter; they stating that any property they might have or own during life should be **given** to her, or be hers, at their death, and that they would adopt her, and make her their heir." The principal question discussed was whether the contract, resting, as it did, in parol, came within the influence of the statute of frauds, and the court, in discussing that question, cited approvingly many of the cases heretofore discussed, and held that it was enforceable, but upon what phase of the contract is not stated, except that the court makes it clear that it was not so held as a contract to adopt. The court expressly says (p. 212) that a contract to adopt can not be decreed to be performed.

In Chehak v. Battles, 110 N. W. Rep. (Iowa), 330, the contract was one of adoption, but ineffective because not in compliance with the statute. The court, after a lengthy review of the authorities, held the contract enforceable.

In Jaffee v. Jacobson, 48 Fed. 21, the agreement was, in substance, that the promisor agreed "to **leave** to complaintants one-half of his estate." There was no adoption or agreement to adopt.

In Rhodes v. Rhodes, 3 Sandf. Ch. 279, the court had under consideration an agreement made

between two brothers who had always lived together and owned their property in common, by which one, having a family, agreed to provide for, and take care of the other who had no family, and who was subject to epileptic fits, during his life, in consideration that the former should have all the real and personal property of the latter.

In Van Dyne v. Vreeland, 11 N. J. Eq. 371, the contract which was enforced by the court was that the promisor should take and adopt the infant as his own child, and that he would treat him as his own son, and that the property he should have should be **given** to the child, so that it should belong to him at the death of himself and wife. This case is again reported, upon final submission, in 12 N. J. Eq., 142.

In Fulisier v. Masse, 4 La. 423, an "act" was executed before an officer, in which the parties declared that, not having children by their marriage, they were desirous of nominating an universal heir to their estate; that for this purpose they adopt the father's natural son, Pierre, with all the rights which that quality can confer on him; and that they constitute him their only and universal heir, after their death, of all their present and future property. It further appears that the donors had no forced heirs at the time the act was executed, and died without any. The court, after discussing the law touching adoption of force at the time of the transaction, says:

"We are, therefore, of the opinion that the instrument produced in this case did not consti-

tute plaintiff the adopted son of the parties, whose intention was to make him such. The next question is, whether the **donation** contained in it fails as a consequence of the act of adoption being invalid. As the **donor** had no forced heirs at the time the adoption was made, and died without any, the **donee** had the capacity to receive, independent of the adoption. We, therefore, think that part of the instrument by which they **gave** him the property after their death was valid and should take effect."

In Sutton v. Hayden, 62 Mo. 101, there was an agreement that if the child would come and live with the deceased, "she should be as a daughter to her and more, and take care of her for the remainder of her life, all that she had should be hers at her death." This is manifestly the equivalent to a covenant to will her the property.

In re Wallace's Estate, 66 Atl. Rep. (Pa.), 1098, it was held that words of adoption in an apprentice agreement did not operate an adoption. This case is in point on the proposition that the whole instrument, and not a part merely, should control in its construction.

In Peterson v. Bauer, 119 N. W. Rep. (Neb.), 764, the contract enforced was to adopt the child, and at the death of the promisor, to **"leave** her one-half of his estate."

This review of the authorities shows (1) that where a contract, based upon a valuable consideration, is to will, or, as it is frequently expressed, to leave or give, at death, all or a specific part of the

promisor's property, the courts, in the absence of facts showing it would be inequitable to do so, will specifically enforce the contract; but (2) that where the contract is to adopt the child, or make him an heir, the decisions are in conflict, some holding that the contract is valid and enforceable, while others hold to the contrary doctrine. And we submit that a careful analysis of the decisions holding that the contract is valid and enforceable will show either that the courts did not carefully consider the difference between such contracts and contracts to will, or to leave or give property at their death, or that they construed the contracts considered as contracts to will, etc., or they were impelled to the decisions by facts and circumstances operating in the nature of an equitable estoppel. We submit, further, that the better and sounder doctrine supports the decisions declaring such contracts invalid and unenforceable.

That there is a manifest difference in legal effect between the two classes of contracts, cannot be denied. As was said in Grantham v. Gossett, 81 S. W. Rep. p. 899, **supra**:

> "A contract to adopt a child is one thing, and a contract to make a will in the child's favor is another. If a child is adopted, it is entitled to inherit as an heir if the adopting parent should die intestate; but it is liable to be cut out by will, as one's own child is. If there is a valid and enforceable contract to make a will in favor of the child, then, although the child will not inherit as an adopted

one would, yet it cannot be cut off by a will that violates the contract."

(5)

It seems to be contended by adverse counsel that, as to property in Alabama, the adoption was invalid, and, therefore, being ineffectual there, the act of adoption should be enforced as an executory contract. But the adoption was not invalid in Alabama. It fixed the status of adopted children as fully in Alabama as in Louisiana. The full faith and credit clause of the Federal Constitution might enforce this result, but if not, certainly, the comity between the states would do so. In no proceeding in Alabama has the validity of the adoption been assailed; certainly, it is not assailed by the appellees in this case. It is broadly affirmed in their behalf that the act of adoption is valid. It is not as to the **validity,** but as to the **effect** of the adoption, that causes controversy in this cause. The appellees simply assert that their right of inheritance is not affected by the adoption; this right, they contend, is given them by the Alabama statutes of descent.

FIFTH.

Rights of Appellees not affected by the money obtained by McGehee alleged in amendment.

In the amendment filed on the 7th of September, 1911 (Rec. p. 30-31), it is averred, in substance, that in the year 1894, for the purpose of

relieving the said George T. McGehee from his then financial embarrassment, and consequent great distress of mind, the appellants turned over to him $8,600, which had been procured by them from a certain fund created by voluntary contributions for the benefit of their father's children; and that said sum has never been repaid to them. Whether this was a loan or a gift is not stated. It may have been one or the other, so far as disclosed by the bill of complaint. Whether one or the other, we submit, it can have no legal effect upon the rights of the parties to this suit. If a loan, it is merely a debt against the estate of George T. McGehee; if a gift, it can only evidence the generosity of appellants. It is not even averred that this gift or loan was made upon the faith of any agreement that they would inherit all of his property at his death: but even if there was such an averment, the act can only be ascribed in such case to a misconceived idea which they had as to the effect of their status as adopted children.

It appears from the letter written to the appellants by McGehee, averred in another amendment to the bill, and heretofore discussed, and which was written after this money was turned over to McGehee, that McGehee did owe the appellants money which he had borrowed from them; and it is fair to presume, therefore, that this money was loaned to him.

SIXTH.

The demurrer does not admit the construction placed by Appellants upon the act of adoption.

It is well settled by the decisons of this Court that while a demurrer admits facts well pleaded, it does not admit (1) that the construction of a written instrument set forth in the bill of complaint is the true one (Interstate Land Company v. Maxwell Land Grant Company, 139 U. S. 569; Dillon v. Barnard, 21 Wall. 430; United States v. Ames, 99 U. S. 35, 45; Hitchcock v. Buchanan, 105 U. S. 416); or (2) that the construction of a statute set forth in the bill is the correct one, or that the statute imposes the obligations or confers the rights which the bill asserts (Pennie v. Reis, 132 U. S. 464; Finney v. Guy, 189 U. S., 335, 343); or (3) conclusions of law averred in the bill (Mosher v. St. Louis Co., 127 U. S. 390; United States v. Des Moines Co., 142 U. S. 510; Kent v. Lake Superior Co., 144 U. S. 75, 91; Dillon v. Barnard, 21 Wall 430, 437).

Respectfully submitted,

Jno. P. Dillman.

Solicitor for Appellees.

Supreme Court of the United States

October Term, 1914.

No. 281.

IDA RICHARDSON HOOD AND ODILE MUSSOM HOOD HOLLAND,
Appellants,

versus

J. B. McGEHEE ET AL.,
Appellees.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR APPELLEES.

STATEMENT.

The case presented by the record is a bill in equity filed by the appellants against the appellees in a double aspect; one, in the nature of a bill **quia timet,** seeking to give effect to the full faith and credit clause of the Federal Constitution, by having decreed that certain adoption proceedings had in the State of Louisiana, under the laws of

that state, by which one George T. McGehee and his wife, now deceased, adopted the appellants, while minors of tender years, as their children, vested the title to certain lands described in the bill, and the subject-matter of this suit, in the appellants, as such adopted children, and seeking further to restrain the appellees, the next of kin and heirs at law by blood, from interfering with appellants' enjoyment and possession of the lands, as threatened by them; and the other, seeking, in the event that they be not entitled to such decree, in the alternative, that a contract between the adopting parents and the children, or their tutrix for them, be declared to the effect that the appellants were entitled, upon the death of George T. McGehee, to his property, left at the time of his death, including the lands in controversy, and that such contract be specifically performed, **pro tanto** at least, by vesting the legal title to the lands in the appellants.

As appears from the averments of the bill, as three times amended, the appellants are the daughters of General John B. Hood, who died in August, 1877, and, in March, 1880, when they were three years of age, George T. McGehee, with the approval and co-operation of his wife, **adopted** the appellants **"according to the laws of the State of Louisiana,"** in which state the appellants were born and then lived, by proceedings "had, entered into and properly consummated before the properly constituted authorities of the State of Louisiana;" copies of these proceedings